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APPENDICES VOLUME II OF III

(106a-242a)

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 95-70664

WILLIAM C. SARSFIELD

Petitioner,

v.

OFFICE OF THE COMPTROLLER OF THE CURRENCY,

Respondent.

No. AA-EC-93-144

WILLIAM C. SARSFIELD

Petitioner,

v.

UNITED STATES DEPARTMENT OF THE TREASURY,

Respondent.

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137 pp

[Filed Feb. 3, 1995]

UNITED STATES OF AMERICA

DEPARTMENT OF THE TREASURY

OFFICE OF THE COMPTROLLER OF THE CURRENCY

OCC-AA-EC-93-144

In the Matter Of: William C. Sarsfield, Former Chairman of the Board and Current Director; Kent D. Glover, Former President and Current Director; Charles Puccinelli, Peter P. Bolles, Thomas J. Niedermeyer, Sr., and Richard C. Van Valer, Former Directors; John F. Henning, Jr., and Norman I. Krug, Current Directors, Sequoia National Bank, San Francisco, California

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Recommended Decision

Appearances:

For the Office of the Comptroller of the Currency

Mr. Michael G. Bloise, Esq.

Mr. Daniel P. Stipano, Esq.

For Respondent William C. Sarsfield

Mr. Michael W. McCann, Esq.

ARTHUR L. SHIPE, Administrative Law Judge

I. SUMMARY

This proceeding arises from a Notice of Assessment of Civil Money Penalties issued by the Office of the Comptroller of the Currency on November 20, 1993. The Notice assessed penalties against each member of the Sequoia National Bank Board of Directors, in the amount of $15,000 against Respondents Sarsfield and Glover, and $5,000 against Respondents Puccinelli, Bolles, Neidermeyer, Van Valer, Henning, and Krug. Jurisdiction of the proceeding has not been contested.

During pre-hearing negotiations, all respondents settled their respective assessments with the exception of Respondent Sarsfield, whose matter was heard in San Francisco, California, during the period June 7 - 10, 1994. The parties appearing at hearing were represented by the above counsel.

After careful consideration of the entire administrative hearing in this proceeding[1], to include my observation of the evidence, the arguments, and witnesses presented, I recommend that Respondent Sarsfield be assessed civil money penalties in the amount of $10,000 for the violations and reasons set forth in more detail below.

II. DISCUSSION OF FACT

Respondent Sarsfield is a current director and former board chairman of the Sequoia National Bank ("Sequoia National"), San

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[1] The Respondent's Post-Hearing Motion to Strike Section II of the OCC's Reply Brief is hereby DENIED, and the entire brief is received.

Francisco, California. His long career in the banking industry includes several executive positions with respected financial institutions; experience as an Assistant national Bank Examiner with the Office of the Comptroller of the Currency; the position of adjunct professor of banking at Golden Gate University; and recognition for many years as a consultant and expert on the subjects of banking and venture capital.

In the year 1984 Respondent joined together several investors for the purpose of establishing in the bay area a savings and loan institution to finance certain real estate transactions. The institution first opened in the year 1986, and the following year, 1987, converted its charter to that of a national banking association, under which it has operated ever since.

From the very beginning, Respondent Sarsfield always played a key role in the direction of Sequoia National. He initially began his service as chairman of the institution's holding company, eventually became a senior executive officer, and finally Chairman of the bank's board of directors.

Sequoia National first drew regulatory concern in the year 1988, when an OCC examination conducted as of February 29, 1988, cited several unacceptable practices, including unreasonable reliance and dependence on volatile funds, unacceptable reserve allocations for problem loans and lease losses, and inadequate supervision over the loan portfolio. Overall the bank was in satisfactory condition, and was assigned a CAMEL rating of 2, reflecting a fundamentally sound institution, with modest weaknesses correctable in the normal course

of business.

The next OCC examination was conducted as of March 31, 1990. The results of this examination concluded that the Sequoia board of directors had not implemented the recommendations made in the previous examination, and that many of the same problems persisted. Though the overall condition of the bank remained satisfactory, the institution was again assigned a CAMEL rating of 2.

The next examination was conducted as of July 31, 1991. The results of this examination disclosed significant deterioration in the institution's overall operating condition, and resulted in the assessment of a CAMEL composite rating of 4. This rating obviously indicates an immoderate volume of serious financial weaknesses or combination of other conditions, which were cite by the examiners as unsatisfactory. Much, if not all of the deterioration, was attributed to the same weaknesses that had been discussed in the previous examinations.

The OCC examiners specifically expressed concern about a number of factors, including the bank's inadequate cash flow analysis, problem loan identification, supervision and administration of the loan portfolio, methodology behind the institutions ALLL, liquidity, over-reliance on volatile liabilities, and other problems. As a result of these findings and conclusions, the Board of Directors of the Sequoia National Bank, and representatives of the OCC, entered into a consent Cease and Desist Order effective March 4, 1992. This Order, which was reviewed in detail by the bank's board before its acceptance, contained comprehensive provisions designed to restore

operations of the bank to safe and sound standards.

The board began submitting various proposals and reports to the OCC, in the attempt to comply with the requirements of the outstanding Order. Officials of the OCC began reviewing and responding to the bank's submissions, expressing from the outset concern and criticism over some of the board's various responses.

The institution underwent its next examination as of June 30, 1992. OCC examiners carefully reviewed the articles of the consent order, and concluded that the Bank was not in compliance with the order as a whole, and specifically found noncompliance with Articles VI, VII, X, XII, XIII and XV, and partial compliance with Article IX.

As a result of these findings, the institution was assigned a composite CAMEL rating of 5, indicative of an extremely high immediate or near term probability of failure. The instant civil money penalty assessments were made as a result of these findings.

Respondent Sarsfield has steadfastly insisted throughout this proceeding that the OCC has failed to demonstrate material noncompliance with any of the disputed articles of the Consent Order. He argues that the only evidence offered in support of these allegations is the subjective opinions of bank examiners, which he characterizes as "semantic criticisms" of the monthly reports prepared and submitted by the board.

As a general matter, I find that the Sequoia board of directors, and more specifically Respondent Sarsfield himself, made some attempt to comply with the OCC requirements. Lengthy and voluminous reports were indeed prepared and submitted in response to the consent order, in an attempt to correct and remedy the problems faced by the bank.

The simple fact of the matter, however, is that the various directors of this institution were bitterly divided in personal dispute. The animosity between the members ran so deeply, that it appears, in my opinion, the board was distracted by these various personal problems, and could not provide the detailed focus required of the problems at hand.

While these personal differences cannot be said to relieve the board members of their fiduciary obligation to properly direct the affairs of the bank, they do illustrate the atmosphere in which Respondent Sarsfield, and the other members, dealt with the Consent order, and the problems presented to the board as a result thereof.

I am convinced that both the majority and the minority faction of the board genuinely wanted to achieve compliance with the consent order, and sincerely wanted to do that which was in the best interest of the bank. Their fierce disagreement, however, which actually deteriorated to a level of personal hatred between some, unfortunately precluded the effective accomplishment of either objective.

Specifically the OCC has alleged that the board of directors, and Respondent Sarsfield as the former Chairman of that board, failed

to comply with Articles VI and VII of the Consent Order. Article VI required the bank to maintain adequate levels of liquidity, and to develop and implement liquidity plans that would ensure sufficient liquid assets to sustain the bank's future operations. Article VII required that the bank implement a plan to reduce reliance on volatile liabilities.

On the issue of liquidity the board agreed to retain an outside consultant. This consultant, after considerable time and effort, made several recommendations for improvement of the institution's liquidity position, and compliance with the outstanding order.

The various board members, however, could not agree on the implementation of these recommendations. After considerable debate, the majority faction of the board (to which Respondent Sarsfield belonged) rejected the consultant's recommendations (advocated by the minority faction, and implemented the institution's own liquidity plan.

While the plan ultimately implemented by the board may have had the effect of increasing liquidity levels, it clearly did not set forth a sufficient contingency plan which was expressly required by the Consent Order.

Respondent Sarsfield argued that no such plan was needed, as no contingency or "crisis" existed which would require or justify such planning. In my opinion, however, that is not the issue. Rather, the issue is whether the board implemented a satisfactory contingency plan as required by the OCC Order, and it is my conclusion, after a thorough review of the evidence, that the board did not, thereby

failing to comply with Article VI of the outstanding Order.

Article VII required the implementation of a specific plan for the reduction of the bank's reliance on volatile liabilities. The bank did submit voluminous monthly reports on this subject during the period April through July 1992.

The OCC does not allege, therefore, that the board "did nothing" in response to this Article. Rather, the OCC charges that those actions taken by the board were not sufficient enough to alleviate bank's volatile structure, and hence, the Board should be held accountable for this noncompliance.

After considering the evidence of record, I must concur with the OCC on this issue. The information submitted pursuant to Article VII does not, in my opinion, sufficiently specify the board's intended plan, nor does it contain adequate discussion of the alternate means by which the board intends to remedy the cited concern. Accordingly, I conclude that the board's actions did not sufficiently comply with the requirements of this article.

The next issue concerns Article IX of the Consent Order, which required the Board to revise the institution's written loan policy within 60 days. The OCC examiners concluded that while management did in fact revise the policy[2], the Board of Directors had not approved or adopted this revision, nor did the revision contain certain provisions which the OCC deemed material. Based upon

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[2] The loan policy revision actually began before the execution and effective date of the Consent Order.

these findings, the examiners ultimately concluded that the institution only partially complied with the provisions of Article IX.

Obviously the question of compliance with this one particular provision, as with others discussed herein, is one of degree. It seems that most of the OCC criticism with respect to this violation focuses on the adequacy of the new policy, and not so much on its procedural irregularity.

Respondent Sarsfield argues -- and I agree -- that substantial effort went into this revision. He further argues that OCC examiners had acknowledged the sufficiency of this particular effort, such that the Board of Directors thought no further action was required on this matter.

The record reflects, however, that OCC officials made very clear the fact that they reserved right to review and comment on these new revisions. The Examination of June 30, 1992, furthermore sets forth the examiners conclusions with respect to these matters, and shows in detail the concerns maintained by the OCC.

In my opinion, the OCC's concerns are justified on this issue. While I recognize that the Board began revision of the policy almost immediately, I must conclude that further concerted effort was required on numerous provisions, and the proposal set forth by the Board did not sufficiently comply with the requirement of the outstanding Order.

The next issue involves the alleged violation of Article X of the Order, which required the Bank to implement an effective loan review program within 60 days. To assist with compliance of this

provision, the bank again retained the services of an outside consultant, who analyzed the bank's loan review policy, and made several recommendations.

The principal criticism with the bank's action in this regard is the OCC contention that several loans examined at the December 31, 1992 examination were downgraded, to classifications lower than those assigned by the bank through its own review. This resulted in the OCC contention that the loan review policy of the bank was inadequate, as it did not recognize the "proper" classifications for these various assets.

Respondent Sarsfield correctly notes, however, that virtually all of the loans classified or downgraded by the examiners paid in full, and that the institution's record of loan losses was relatively insignificant, when compared with other institutions. While I realize that the subsequent repayment of a loan does not necessarily mean its previous classification was in error, I am somewhat troubled by the OCC's blanket assertion that this board failed to adequately perform the important function of loan review.

In my opinion, this case rather poignantly demonstrates the subjectivity inherent within the practice of classifying loans. Two separate review of the same loan may result in different determinations about its status, which appears to be the case in this matter.

The question here is not whether the classifications assigned by the examiners were right or wrong, for I have no quarrel with -- and the bank in many cases accepted -- those conclusions ultimately

reached by the OCC. The question is whether the bank's loan review policy was so inadequate as to warrant a citation for noncompliance with Article X of the Order, and I cannot agree that it was.

The evidence in this case demonstrates that the bank monitored its loan portfolio, that it assigned classifications to those loans which it identified as troubled, that the OCC examiners disagreed with several of the levels of classifications assigned by the bank and downgraded those assessments, and that virtually all the loans downgraded by the examiners were repaid in full, including several which were downgraded to "loss".

On this record I cannot conclude that the loan review program maintained by the bank was so inadequate as to support the imposition of civil money penalties against this Respondent.

The next issue involves the OCC contention that the Board failed to establish an adequate program for the maintenance of an Allowance for Loan and Lease Losses, as required by Article XII of the Order. Again, as with other alleged violations, the basis of this charge is not that the bank failed to maintain an allowance for such losses, but rather, that the methodology behind the bank's allowance was unsatisfactory.

Respondent Sarsfield offered into evidence the many monthly reports that were filed with the OCC on this issue. Each of these reports demonstrates the allowance established by the bank, but none of them clearly explains the methodology employed in arriving at these various standards.

This issue was repeatedly cited in no fewer than five of the bank's examination reports, yet for reasons that are not completely clear, the board did not set forth, in my opinion, a satisfactory explanation for the amount of allowance allocated for the various assets within the portfolio.

Respondent Sarsfield argues that because of the unique loan losses incurred by the bank, a more complex methodology was employed to analyze and allocate the reserve for prospective losses.

If this were the case, I should think that a detailed description of this methodology would be in order. I cannot, however, conclude that such description was ever provided, nor can I conclude that the board sufficiently complied with Article XII of the consent order for this very reason.

Article XIII alleges that the bank did not obtain current and satisfactory credit information on certain existing loans, nor did it ensure that proper collateral documentation was secured and maintained on existing secured credits.

The record reflects that multiple loans reviewed subsequent to the entry of the Consent Order did not contain updated financial information, some 20 percent of the loans did not contain adequate appraisals, and several newly-extended loans did not contain adequate cash flow analysis to support their approval.

Respondent Sarsfield does not dispute the collateral exceptions or the exceptions involving inadequate cash flow analysis. In response to the allegations concerning the financial information, He argues that the bank lacked any legal means by which to require

updated financial information for those equity lines with current payments. This legal impossibility was communicated to officials of the OCC, who apparently acknowledged this problem, indicating that reasonable efforts to obtain the information would suffice.

Respondent Sarsfield testified that bank officials sent letters to various borrowers, requesting the updated financial statements. On certain "problem loans," however, the Respondent specifically instructed the officers not to send such letters, as he was "taking on the responsibility of trying to collect the loans." (Tr. at 462 L. 21)

With several of these problem loans the Respondent indicated that he"did not care what [the] financial condition looked like" but rather, simply "wanted that loan paid." (Tr. at 466 L. 20).

While I can certainly understand the Respondent's concerns with respect to these borrowers, and the difficulty experienced by the bank in collecting these credits, I do not think that Respondent Sarsfield can choose to disregard the requirement that he take reasonable efforts to obtain updated financial information on these particular customers.

Granted, the borrowers may not be obligated to produce this information under state law. This possibility the OCC specifically recognized.

Nothing, however, precludes the bank from taking reasonable efforts to procure this information, and in this particular case, Respondent Sarsfield admits he chose not to. His reasons for having chosen this course of action may have some validity, in that he did not want to offend the borrowers, or threaten the collection of these

precarious loans.

The consequence of this action, however, is technical noncompliance with the Consent Order, which I conclude forms a sufficient basis for the imposition of civil money penalties.

The final allegation in these proceedings involves the charge that the board failed to comply with Article XV of the Consent Order, which required the bank to maintain Tier 1 capital in the amount of 8 percent, and to develop and submit to the OCC a three year capital program detailing the specific plans and projections of current and future capital needs.

The evidence in this regard demonstrates that the bank maintained capital in excess of the 8 percent minimum, and employed conscientious efforts to insure the continued capitalization of the institution.

In February of 1993, OCC examiners directed certain accounting adjustments to the Freddie Mac/Fannie Mae servicing contracts maintained by the bank, and these adjustments, which were retroactively applied to December of 1992, caused the institution's Tier 1 Capital to drop to a level slightly below the 8 percent minimum. Within three months Sequoia sold certain assets, and restored the capital account to a level exceeding the 8 percent requirement.

The record does contain certain personal accusations that Respondent Sarsfield intentionally resisted adequate recapitalization of the bank. I reject these assertions, however, as the product of this personal animosity between directors, not adequately founded in

evidence.

Rather, I conclude that the entire Board, to include Respondent Sarsfield, fully intended to insure adequate capitalization of Sequoia National as required by the Consent Order. But for the retroactive adjustment made by the OCC, the bank would have remained fully capitalized as required.

I cannot conclude that this Respondent caused, brought about, or participated in the undercapitalization of the bank as a result of this adjustment to the capital account, and decline to conclude a cognizable violation of Article XV of the Order.

III. DISCUSSION OF LAW

Section 8 (i) of the Federal Deposit Insurance Act provides in pertinent part as follows:

> (2) (A) First Tier. Any insured depository institution which, and any institution-affiliated party who --
>
> (i) violates any law or regulation;
>
> (ii) violates any final order or temporary order issued pursuant to subsection (b), (c), (e), (g), or (s) of this section;
>
> (iii) violates any condition imposed in writing by the appropriate Federal banking agency in connection with the grant of any application or other request by such depository institution; or
>
> (iv) violates any written agreement between such depository institution and such agency, shall forfeit and pay a civil money penalty of not more than

> $5,000 for each day during which such violation continues.

12 U.S.C. § 1818 (I).

Obviously the principal issue here involves the alleged "violation" of the outstanding Consent Order, which is in fact a final order within the meaning of 12 U.S.C. § 1818 (i) (2) (A) (ii).

As set forth in my discussion above, I have concluded that Respondent Sarsfield is responsible, as are all members of the board of directors, for the ultimate noncompliance with Articles VI, VII, IX, XII, and XIII. I do not find these violations to be flagrant or intentional, for in my opinion the evidence demonstrates that substantial effort was undertaken to attempt compliance with the OCC mandates.

For the most part, the cited violations are a matter of degree, which I have considered in arriving at my decision. The Federal Deposit Insurance Act requires consideration of four factors in determining the assessment of penalties:

(1) The size of the Respondents' financial resources;

(2) The good faith of the Respondent;

(3) The gravity of the violation; and,

(4) Previous violations, and other matters justice may require.

I have considered each of these factors, to include the Respondent's financial resources, which are sufficient to pay the penalty assessed. I have considered the good faith of the Respondent, to include his efforts to assure compliance with the Consent Order;

his actions in withdrawing from active management of the bank to permit others to direct the institution's activities; and his attempts to install corrective measures at the Sequoia National Bank.

I have considered the gravity of the violations, which for the most part are technical in nature, and deal with the degree or sufficiency of compliance, as opposed to an outward refusal or intentional decision not to comply. I have considered that these violations, in conjunction with other problems, resulted in serious decline of the institution's health, and resulted in unsafe and unsound banking conditions.

I have considered the previous violations, which are extensive, and are well-documented in the various examination reports concerning the Sequoia National Bank. I have considered the Respondent's motivation in achieving compliance with the Order, and the factional division with which the Board of Directors of this institution unfortunately operated. Considering the totality of the circumstances, I recommend that Respondent Sarsfield be assessed civil money penalties in the amount of $10,000.

Accordingly, I enter the following Findings of Fact, Conclusions of Law, and Proposed Order.

IV. FINDINGS OF FACT

I. Jurisdiction

1. At all times relevant herein, Sequoia National Bank, San Francisco, California, was a national banking association chartered and examined by the Office of the Comptroller of the Currency, pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 et seq. (Admitted: Answer to Notice of Assessment of a Civil Money Penalty ["Notice])

2. At all times relevant herein, Respondent Sarsfield served as a director and/or officer of Sequoia, and was an institution-affiliated party within the meaning of 12 U.S. C. §§ 1813(u) and 1818 (i). (Admitted: Answer to Notice)

3. At all times relevant herein, Respondent served as Chairman of the Board of Directors of Sequoia. (OCC exhibit 43, p. 7; OCC exhibit 38, p. 1; OCC exhibit 33, p. 1; OCC exhibit 27, p. 1; OCC exhibit 12, ppg. 1-3; OCC exhibit 36, p. 1; OCC exhibit 21, ppg. 2-3; Sarsfield TR 273)

II. Respondent's Duties

4. Until September 1992, Respondent served as an executive officer of Sequoia, by managing the Bank. (OCC exhibit 43, p. 7)

5. Respondent's role was reduced by on August 24, 1992, with Director Granholm becoming interim president. (OCC exhibit 21)

6. After September 1992, Respondent maintained a management position on the Board of Directors of

Sequoia. (OCC exhibit 43, ppg. 6-7; OCC exhibit 141, p. 13; OCC exhibit 30, p. 1; OCC exhibit 36, p. 4; OCC exhibit 37, p. 2; Henning TR 791-796)

7. From August 1992 onward, Respondent was also a paid consultant of Sequoia. (OCC exhibit 43, p. 7; OCC exhibit 21, p. 2; Sarsfield TR 273)

8. Respondent continued his role in Bank management. He reviewed and made recommendations respective to customer overdrafts with Bank staff, and was involved with the day-to-day operations of the Bank for the period at least until December 14, 1992, making executive decisions. (OCC exhibit 140, p. 36; OCC exhibit 37, p. 2).

9. The Bank had a Compliance Committee of its Board of Directors, as of April 1992. (Sander TR 45).

10. During 1992, the members of the Compliance Committee were Directors Bolles, Puccinelli, Henning, and Bray. (Sander TR 46)

11. The Compliance Committee kept minutes of its meetings, which the examiner-in-charge of Sequoia, Raymond Sander, reviewed as part of his duties. (Sander TR 46)

12. Douglas N. Akay is an attorney who provided legal advice to the Compliance Committee. (OCC exhibit 35, p. 2; OCC exhibit 36, p. 1; OCC exhibit 37)

13. Director Bolles wrote a memorandum to Attorney Akay, on December 14, 1992, which stated that, although his responsibilities had been formally reduced, Respondent Sarfield

was still in charge of the Bank as of December, 1992. (OCC exhibit 36)

14. Between June 30, 1992 and December 31, 1992, two distinct factions arose on Sequoia's Board of Directors. (OCC exhibit 43, p. 7)

15. Respondent was a member of the majority faction, which had the ability to outvote the members of the minority faction. (Sarsfield TR 542-547)

16. After three members of the minority group of directors left the Board, the Board was unified behind Respondent. (OCC exhibit 141, p. 10; Bolles TR 825-828).

17. Respondent appears to have maintained a dominant position on the Board of Directors after September 1992 through interlocking relationships with a majority of other Board members. (Henning TR 791-796; OCC exhibit 36, p. 4)

III. Sequoia's Background

18. Sequoia underwent a comprehensive OCC bank examination as of February 29, 1988 examination. (OCC ex. 154).

19. The OCC examiners expressed concern at this examination about Sequoia's reliance on volatile liabilities, its reserve allocations, its Allowance for Loan and Lease Losses (ALLL); and its loan portfolio supervision. (Sander TR 34; OCC exhibit 154, p. 3)

20. As a result of this examination the Sequoia Board of Directors was cautioned to reduce its reliance on volatile

funds exceeded reasonable proportions, and to better document is ALLL methodology (OCC exhibit 1, p. 2-3; Sander TR 34)

21. The overall condition of the bank was satisfactory, and the institution was assigned a camel rating or 2. (OCC exhibit 154)

22. The bank was next examiner as of March 31, 1990. (OCC exhibit 2, p. 2)

23. The results of this examination concluded that Sequoia maintained an extreme reliance on volatile funds, and needed to develop a greater core deposit base. (OCC exhibit 2, p. 1)

24. The OCC was additionally concerned about Sequoia's ALLL methodology, and an upward trend in problem loans. (Sander TR 35; OCC exhibit 2, ppg. 1 and 3; OCC exhibit 2, p. 2 of June 12, 1990 letter to Board)

25. The examination noted that Sequoia had not implemented recommendations made by the OCC in its previous examination concerning a reduction in volatile liability dependence, and a plan to detail how core deposits would be attracted. (OCC exhibit 2, p. 1)

26. The overall condition if the Bank remained satisfactory, however, and the institution was again assigned a camel rating or 2. (OCC exhibit 2)

IV. Review Prior to the July 31, 1991 Examination

27. In July 1991, the OCC made an unscheduled request for information from the Bank. The information was used to assess the Bank's liquidity situation. (OCC exhibit 5; Sander TR 39)

(ER 52)

28. This review found that the Bank's liquidity position when compared with that of peer institutions was very poor. (OCC exhibit 5, p. 3)

29. The report of this review notes that senior management's plan to use a Federal Home Loan Bank ("FHLB") line for primary liquidity was unsatisfactory. (OCC exhibit 5, p. 3)

30. The report of this review required the Bank to develop a liquidity contingency plan. (OCC exhibit 5, p. 4)

31. The report of this review required the Bank to revise its strategic plan to address liquidity and deposit composition, and to have well defined goals, objectives and action plans. (OCC exhibit 5, p. 4)

V. The July 31, 1991 Examination

32. Sequoia National was next examined as of July 31, 1991. The results of this examination found significant deterioration in the Bank's overall condition, including concerns with major CAMEL components of the Bank. (Sander TR 36)

33. The examiners noted that concerns expressed at prior examinations, involving inadequate cash flow analysis, problem loan identification , and the ALLL methodology, had not been resolved. (OCC exhibit 4, p. 8)

34. The examination noted that the Bank's ALLL methodology was flawed, and did not take into account all of the factors of Banking Circular 201. (OCC exhibit 4, page 2)

35. The July 31, 1991 examination of Sequoia noted that serious weaknesses in loan administration had not been

addressed. (OCC exhibit 4, p. 2)

36. The July 31, 1991 examination of Sequoia noted that the Bank had ineffective loan portfolio supervision, including liberal underwriting, an inability to detect problem loans, and a failure to ensure insider legal compliance. (OCC exhibit 4, p. 9)

37. The July 31, 1991 examination of Sequoia noted that the Bank's unacceptable lending practices included a failure to identify and document sources of repayment, a failure to adequately analyze borrower repayment ability, financial condition and credit history, a failure to properly document credit files to reflect significant developments, and a heavy reliance on junior liens when the prior liens exceed the Bank's lending limit and the Bank's equity position is questionable. (OCC exhibit 4, p. 9)

38. Sequoia's July 31, 1991 examination noted that the Bank's problem loan identification was poor, and that the system did not properly recognize deteriorating loans. (OCC exhibit 4, p. 9)

39. The July 31, 1991 examination of Sequoia noted that the Bank had 19 instances where management failed to note loans containing significant weaknesses. Twelve of the loans were misclassified by two grades. (OCC exhibit 4, p. 10)

40. The July 31, 1991 examination of Sequoia noted that the inadequacy of the loan policy at the Bank was a concern. (OCC exhibit 4, p. 9)

(ER 52)

41. The July 31, 1991 examination of Sequoia noted that liquidity was very poor based upon the current ratio of liquid assets to interest-sensitive liabilities, when compared to peer group. (OCC exhibit 4, p. 6)

42. The July 31, 1991 examination of Sequoia found the Bank's liquidity position to be a serious concern, with elements present that could lead to insolvency. (OCC exhibit 4, p. 6)

43. Sequoia was cited for an over-reliance on volatile liabilities at the July 31, 1991 examination. (OCC exhibit 4, p. 6)

44. The July 31, 1991 examination of Sequoia noted that the Bank was extremely vulnerable to even modest reductions in out-of-area deposit sources. (OCC exhibit 4, p. 6)

45. The July 31, 1991 examination of Sequoia noted that the Bank's FHLB secured line was not considered a solution to Sequoia's liquidity situation. (OCC exhibit 4, p. 6)

46. The July 31, 1991 examination of Sequoia noted that capital adequacy has been jeopardized by deteriorating asset quality and over-reliance on volatile funding sources. (OCC exhibit 4, p. 2 of cover letter).

47. The July 31, 1991 examination of Sequoia noted that capital is vulnerable based on the large volume of marginal and inferior quality assets in the Bank. (OCC exhibit 4, p. 3)

48. The results of the July 31, 1991 examination, including the overall condition of Sequoia, and the review of the CAMEL components, were communicated to Respondent at that time.

(ER 52)

(OCC exhibit 4, cover letter; Sander TR 36)

49. The overall condition of the Bank was rated as unsatisfactory, and the institution was assigned a camel rating of 4. (OCC exhibit 4)

50. Prior to March 3, 1992, Respondent received written notice of the OCC's criticisms at the July 31, 1991 examination. (OCC exhibit 6; OCC exhibit 7)

51. Respondent was informed at the exit meeting for the July 31, 1991 examination that the OCC could use its supervisory enforcement powers in regard to Sequoia. (Sander TR 36)

VI. The Consent Order

52. Sequoia and the OCC entered into a Consent Order to Cease and Desist ("Consent Order"), which had an effective date of March 4, 1992. (Admission: Answer to Notice; OCC exhibit 8)

53. A meeting of the Board of Directors of Sequoia was held in March 1992, at which time the Board members signed the Consent Order. (Sander TR 41-43)

54. Respondent signed the Consent Order. (OCC exhibit 8, final page; Sander TR 43; Sarsfield TR 275). Respondent previously had opportunity to review the Consent Order with the OCC. (Sarsfield TR 275)

55. OCC examiner Lori Pahler went over each of the Article requirements and informed Respondent, as well as the rest of the Sequoia Board, that it was the responsibility of the Board to

insure compliance with the Consent Order. (Sander TR 43-44)

56. Respondent understood that a director of a bank has an obligation to comply with a consent order entered into by the bank.

VII. Post-Consent Order Correspondence with the OCC

57. Respondent was put on notice as of April 7, 1992 that the OCC had not yet determined whether or not the deficiencies and weaknesses identified at the July 31, 1991 examination had been remedied. (OCC exhibit 9)

58. Respondent was put on notice as of April 7, 1992 that the Bank's loan policy failed to address the following specific Article IX loan policy requirements: Collection procedures; a prohibition on the use of brokered deposits; a conflict of interest policy; and guidelines for periodic review of the Bank's adherence to the revised lending policy. (OCC exhibit 9, p. 2)

59. Respondent was put on notice as of June 11, 1992 that the Bank's responses to the Consent Order had not provided the required development and implementation of a plan to improve the Bank's liquidity position. (OCC exhibit 10)

60. As of the date of that notice, June 11, 1992, the Bank had submitted only an analysis of various balance sheet scenarios, without sufficient discussions or conclusions. (OCC exhibit 10)

61. As of June 11, 1992, the Bank's liquidity contingency plan was inadequate, because it only restated the contingencies outlined in Article VII , paragraph 4, of the Consent Order, without discussion or conclusion of how these contingencies relate to the Bank's current condition, or how they would provide a realistic plan of action to meet liquidity needs in the event of a liquidity crisis. (OCC exhibit 10, p. 2; Sarsfield exhibit 2, liquidity section, p. 6)

62. As of June 11, 1992, management was criticized for citing, in April and May communications with the OCC, that positive liquidity factors were two times negative factors, without supporting whether or not this figure was adequate. (OCC exhibit 10, p. 2; Sarsfield exhibit 1)

63. As of June 11, 1992, the Bank's responses to the requirements of Article VII of the Consent Order were also criticized, for failing to include discussions or conclusions, and for failing to include a plan to reduce the Bank's reliance on volatile liabilities or to establish limitations on the use of volatile liabilities as a funding source. (OCC exhibit 10, p. 2, Sarsfield exhibit 2, Article VII section)

64. As of June 11, 1992, management was again informed that the FHLB credit line is not "self-liquidating," and that the assets securing the line were not considered liquid assets. (OCC exhibit 10)

65. As of June 11, 1992, management continued to use a liquidity parameter of a 15% ratio of net available funds to

liabilities, which was not supported by the Bank. (OCC exhibit 10)

66. As of July 8, 1992, and as a result of the July 11, 1992 letter (OCC exhibit 10) and its own concerns, the Bank's Compliance Committee determined to look to an outside expert to independently assess the Bank's liquidity. (OCC exhibit 11)

VIII. The June 30, 1992 Examination

A. The Examination

67. An examination of the Bank was conducted as of June 30, 1992. (OCC exhibit 12; Sander TR 47-48)

68. The examiners reviewed each of the Articles of the Consent Order for compliance at this examination. (Sander TR 48-49)

69. The June 30, 1992 examination concluded that the Bank was not in compliance with the Consent Order as a whole. (Sander TR 49)

70. The examination concluded that the condition of the Bank was poor and continued to deteriorate. (OCC exhibit 12, p. 1)

71. The June 30, 1992 examination found that Respondent had not effectively guided the Bank's planning efforts. (OCC exhibit 12, p. A-1)

72. The Bank was assigned a composite CAMEL rating of "5" at this examination. (OCC exhibit 12, p. 2)

73. A rating of "5" is reserved for institutions with an extremely high immediate or near term probability of failure. (OCC exhibit 12, p. 2)

74. The June 30, 1992 examination concluded that the Bank was in noncompliance with Articles VI, VII, X, XII and XIII of the Consent Order. (OCC exhibit 12, ppg. A-15 to A-18.)

B. Liquidity and Volatile Liabilities

75. The examination noted that use of a 15% liquidity ratio is not, in and of itself, an acceptable indicator of sufficient liquidity to sustain current operations and withstand any anticipated or extraordinary demands against the Bank's funding base. (OCC exhibit 12,
p. A-15)

76. The examination noted that the Bank's response to the Consent Order lacked the required details for compliance with Article VI, including analysis and conclusions. (OCC exhibit 12, p. A-15)

77. The examination noted that the Bank's contingency plan under Article VI was inadequate, since it restated possible contingencies outlined in the Consent Order, and failed to provide discussions or draw conclusions as to how those contingencies relate to the Bank's current condition, or to provide a realistic action plan for a liquidity crisis. (OCC exhibit 12, p. A-15)

78. The examination noted that the Bank's submissions under Article VII of the Consent Order failed to conclude how, or from what source, alternative funding would be developed, failed to address how the Bank would reduce reliance on volatile liabilities, and failed to establish limits on the use of volatile liabilities as a funding source. (OCC exhibit 12, p. A-15)

79. The examination noted that reports submitted by the Bank for April 8, May 8, June 8, and July 7, 1992 did not adequately address specific alternate funding sources to replace volatile liabilities, which continue to represent over 70% of the Bank's liability structure.
(OCC exhibit 12, p. A-15)

C. Loan Policy

80. The examination noted that the Bank's loan policy, submitted in compliance with Article IX of the Consent Order, did not contain: requirements for updated financial information for problem loans and equity line reviews; adequate guidelines for loan distribution or concentration; specific limits for insider transactions; quarterly loan reviews; a proper loan charge-off guideline; a requirement to document the specific loan purpose on the Bank's loan report forms; a requirement to link maturities with repayment sources; the Banking Bulletin 91-19 definition of "in process of collection;" loan to value ratios for commercial loans, land loans, and stand-by letters of credit; and a responsibility for compliance with policy. (OCC exhibit 12, p. A-16)

81. Specific limits for insider transactions were needed due to the Bank's longstanding problem with insider transactions. (OCC exhibit 12, p. A-16; OCC exhibit 4, p. 5)

D. Loan Portfolio Review

82. The examination concluded that the Bank failed to implement an effective loan review program under Article X within 60 days. (OCC exhibit 12, p. A-16)

83. The loan review program in effect at the Bank did internally review the bank's loans, and did assign an internal classification rating to the various assets.

84. The OCC examiners disagreed with several of the bank's internal classifications.

85. The examination graded a $336,953 loan to borrower Californian Properties, guaranteed by Director Norman I. Krug, as "doubtful." (OCC exhibit 12, p. A-31)

86. The examination graded a $409,500 loan to Borrower F as "doubtful."[3] (OCC exhibit 12, p. A-35)

87. The examination downgraded a $302,076 loan to Richard and Theresa Krug, the parents of Director Norman I. Krug, to "substandard." The Bank had graded the loan "Other Asset Especially Mentioned." (OCC exhibit 12, p. A-38)

E. Allowance for Loan and Lease Losses

88. The examination noted that the Bank's ALLL methodology remained unacceptable, was an unreliable indicator of

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[3] The OCC and Respondent agreed to use a code throughout the hearing to prevent disclosure of the names of third party borrowers not affiliated with the Bank. These third parties were referred to by the first letters of their last names, or by initials.

ALLL adequacy, and did not comply with BC-201. (OCC exhibit 12, p. A-17)

89. The OCC directed the Bank to add $250,000 to its ALLL at the June 30, 1992 examination. (OCC exhibit 12, p. A-17)

90. The Following year the OCC permitted the bank to reduce the ALLL by $100,000. (TR 264)

F. Credit File Documentation

91. The examination noted that adequate and collateral documentation was still not being performed. (OCC exhibit 12, p. A-17)

G. Capital

92. The Bank was told at the June 30, 1992 examination that the use of liberal and unsubstantiated assumptions for the valuation of its Excess Servicing Fee Receivables ("ESFRs") overstated Bank capital. (OCC exhibit 12, p. A-12)

93. Examiner Sander told the Board to support the current value of the ESFRs before the December 31, 1992 examination. (Sander TR 731-732). The Bank was also told to document and justify the assumptions used in the ESFR valuation methodology.

94. Sequoia was informed prior to the June 30, 1992 examination of the need to justify its valuation of the ESFRs. (Henning TR 782-784)

H. Exit Reviews

95. The results of the June 30, 1992 examination as a whole were reviewed with Respondent on August 5, 1992. (OCC exhibit 12, p. 3; OCC exhibit 13, OCC exhibit 14, p. 2; Sander TR 49)

96. The results of the Loan Portfolio management review, and Sequoia's Loan Policy, were discussed with Respondent in July 1992. (OCC exhibit 151; OCC exhibit 153; OCC exhibit 14, p. 4; Sander TR 49)

97. The OCC told Respondent that loan administration and asset policy were poor, that risk ratings were substantially inaccurate, that asset policy was poor, that ALLL methodology was unacceptable, that ALLL balance was inadequate, and that financial statement exceptions, collateral exceptions, and credit administration exceptions were excessive. (OCC exhibit 151; OCC exhibit 14)

98. The OCC told Respondent that the Sequoia's loan policy was not adequate, that it was difficult to find information on the policy, and that the OCC required one resource manual. (OCC exhibit 14, p. 6)

99. Respondent was present at an August 10, 1992 meeting conducted by the OCC examiner Raymond Sander. (OCC exhibit 15)

100. At the August 10, 1992 meeting, the OCC noted that the Bank needed to immediately increase the ALLL to $1 million, pending development of a satisfactory methodology. (OCC exhibit 15, p. 4; OCC exhibit 18)

IX. Failure of the Loan and Investment Committee to Act

101. Sequoia had a Loan and Investment Committee during 1992. (Sander TR 53; OCC exhibit 17)

102. Respondent was a member of the Loan and Investment Committee. (OCC exhibit 64; Sander TR 53-54)

103. On July 28, 1992 the Bank's Compliance Committee sent a memorandum to Sequoia's Loan and Investment Committee. (OCC exhibit 17)

104. The memorandum recited that Sequoia was found by the OCC to be in material non-compliance with many of the lending provisions of the Consent Order. (OCC exhibit 17)

105. The Compliance Committee sent a letter to Raymond Sander on August 10, 1992, in which they stated that neither the Board nor management of the Bank had demonstrated the ability to properly supervise the loan portfolio. (OCC exhibit 18)

106. The Compliance Committee noted in the memorandum that the Bank had perhaps spent too much time concentrating on collection and not policy. (OCC exhibit 18)

107. At its August 24, 1992 meeting, the Compliance Committee noted that the findings of a consultant hired to review the Loan Portfolio reinforced comments made by the OCC at their exit review. (OCC exhibit 20; OCC exhibit 21, p. 5)

108. On November 23, 1992, the Compliance Committee sent a memorandum to the Loan and Investment Committee noting that there had been an insufficient reply to a July 28 1992 request by the Compliance Committee to the Loan and

Investment Committee to address certain items. (OCC exhibit 31; OCC exhibit 36, p. 4)

109. The Compliance Committee noted that the Loan Policy, the ALLL methodology, the vague problem loan reports, financial statement exceptions and poorly documented repayment sources had not been the subjects of a response by the Loan and Investment Committee. (OCC exhibit 31; OCC exhibit 36, p. 4)

110. When confronted in November 1992 with the failure to respond to these concerns, members of the Loan and Investment Committee denied any knowledge of the Compliance Committee's concerns. (OCC exhibit 36, p. 4)

111. When the Compliance Committee attempted to report on their concerns to the Board, Respondent cut the report short. (OCC exhibit 36, p. 4)

X. OCC Action Between the June and December 1992 Examinations

112. Examiner Sander sent a letter to Sequoia's acting president on September 25, 1992. (OCC exhibit 22)

113. This letter communicated the OCC's concern that the Cabell Loan Review Report did not provide Sequoia with a revised ALLL methodology, and did not reach a conclusion on the level of insider compliance. (OCC exhibit 22, p. 1)

114. Sander noted in his letter that Sequoia must have a well documented re-payment plan by September 30, 1992 for the loans to borrowers Krug and F, or risk charge-off of the assets.

(OCC exhibit 22, p. 2)

115. Representatives of the OCC met with the Board on October 23, 1992. (OCC exhibit 25; Sander TR 57)

116. This meeting was called by examiner Sander to follow up on credit issues involving the Borrower F and Californian Properties loans, and Sequoia's liquidity position. (Sander TR 57)

117. At the October Board meeting, Respondent opposed an effort by some directors to charge-off the loan to Borrower F. (OCC exhibit 36, p. 4)

118. The OCC had previously insisted that the loan to Borrower F be charged off. (OCC exhibit 36, p. 4)

119. Director Granholm failed to recommend to the Board that the loan to Borrower F be charged off, on the advice of Respondent. (OCC exhibit 140, p. 36)

120. Acting President Granholm informed examiner Sander at this meeting that he had not had a chance to meet with the Bank's consultant on the liquidity issue. (Sander TR 58)

121. An examination of Sequoia's liquidity position was conducted in October 1992. (OCC exhibit 39; Sander TR 61)

122. The October 1992 examination of Sequoia's liquidity position determined that liquidity insolvency remained a possibility, that management and the Board had been unable to change the volatile deposit mix, and that loss of access to "money desk" funding would result in a liquidity crisis after the end of the

year. (OCC exhibit 39, p. 1)

123. Respondent believed in September 1992 that Sequoia's liquidity position was such that a liquidity problem could arise in December 1992 and January 1993. (OCC exhibit 40; Sander TR 61-62)

124. An examination of Sequoia's liquidity position was conducted in December 1992, prior to the examination. (OCC exhibit 41, Sander TR 62-63)

125. This examination concluded that, if Sequoia continued to allow the runoff of maturing out-of-area certificates of deposit ("CDs") it would run out of operating funds in March 1993. (OCC exhibit 41, p. 1)

126. The December 1992 liquidity review concluded that Sequoia lacked direction and that, contrary to the indication in Sequoia's budget, the Bank had not sold part of its commercial loan portfolio by December 1992. (OCC exhibit 41, p. 2)

XI. The December 31, 1992 Examination

127. An examination of Sequoia was conducted as of December 31, 1992. (OCC exhibit 43)

128. National Bank Examiner Sander served as examiner in charge of this examination. (OCC exhibit 43; Sander TR 64)

129. The onsite portion of this examination lasted for approximately three weeks. (Sander TR 64)

130. There were approximately seven OCC examiners present at the examination, as well as participants from the

FDIC (Sander TR 64)

131. All of the Bank's CAMEL rating components were assessed at this examination. (Sander TR 65)

132. The examiners reviewed each of Article of the Consent Order for compliance, and found noncompliance with the Consent Order as a whole. (Sander TR 65)

133. The examination concluded that the condition of the Bank was critical, and that it remained a seriously troubled institution. (OCC exhibit 43, p. 1)

134. Sequoia was assigned a composite CAMEL rating of "5." (OCC exhibit 43, p. 3)

135. The rating of "5" meant that the Bank was a failure candidate, with imminent failure a possibility. (Sander TR 65)

136. The examination concluded that Sequoia was in noncompliance with Articles VI, VII, IX, X, XII, XIII, and XV of the Consent Order. (OCC exhibit 43, ppg. A-1 to A-17)

XII. Liquidity and Volatile Liabilities

137. Article VI of the Consent Order required that Sequoia immediately increase or maintain liquidity at a level sufficient to sustain current operations and to withstand any anticipated or extraordinary demand against its funding base, and to develop a program to improve the Bank's liquidity position, with a monthly liquidity analysis, all within forty-five (45) days. There is also a reporting requirement, and a requirement that a liquidity contingency plan be developed within sixty (60) days of entering into the Consent Order. (OCC exhibit 8, ppg. 9-11; Sander TR 66)

138. Article VII of the Consent Order required that within thirty (30) days, the Bank adopt and implement a plan, with specific timeframes, to reduce reliance on volatile liabilities through the development of alternative funding sources, and to establish reporting requirements dealing with volatile liabilities. (OCC exhibit 8, ppg. 11-12; Sander TR 67)

139. Sequoia's liquidity was found to be poor at the December 31, 1992 examination, with no active funds management direction other than to cover running-off time deposits with new time CDs from the money desk, and to meet the cash letter. (OCC exhibit 44)

140. Sequoia's percentage of volatile deposits to overall deposits was 72% at the December 31, 1992 examination, the same percentage as at the previous examination. (OCC exhibit 45, p. 1; OCC exhibit 47; OCC exhibit 48; OCC exhibit 51; OCC exhibit 52; Sander TR 72-77)

141. Core deposits, such as demand deposit accounts, money market accounts, and negotiable early withdrawal accounts, are relied on to fund growth in a bank of satisfactory condition. (Sander TR 71)

142. Sequoia did not have core deposit base, and was unable to replace volatile deposits with core deposits. (OCC exhibit 45, p. 1)

143. At the December 31, 1992 examination, Sequoia's core deposits were under 20%, while its peer group was at 80%. This was of serious concern to the examiners. (Sander TR 78-

79; OCC exhibit 53, p. 9)

144. As of December 31, 1992, Sequoia had planned for over six months to sell home equity loans of $11 million to reduce dependence on volatile liabilities. The idea had not been consummated, however, because the files needed extensive work to be made saleable, and because the equity lines were earning assets. (OCC exhibit 45, p. 2). In spite of the August 1992 Board approval for selling loans, no effective action was taken. (OCC exhibit 156, p. 8)

145. Respondent's plan for reducing volatile liabilities (Sarsfield exhibit 37; Sarsfield TR 291-292) was merely a statement that assets should be sold, without any statement of how or to whom (Sarsfield exhibit 37). The "plan" was not implemented by December 1, 1992. (Sander TR 729)

146. Sequoia's secured line of credit with the FHLB cost Sequoia 4.14% in interest expense yearly, while Sequoia sold Fed Funds, equal to and exceeding the amount of the FHLB credit, that yielded under 3%. (OCC exhibit 45)

147. Sequoia's net interest margin declined consistently from 1989 to 1992, which was a negative trend, with one leading contributor to the decline being the Bank's reliance on volatile liabilities. (Sander TR 719-720)

148. Sequoia failed to adhere to the guidelines of its own funds management policy. (OCC exhibit 44, p. 1; OCC exhibit 45; OCC exhibit 62, p. 2; OCC exhibit 63; Sander TR 81-82, 89)

149. Sequoia's funds management policy required the Bank to have no brokered deposits, a liquidity ratio in excess of 20%, a loan to deposit ratio of less than 80%, a 90 day Rate Sensitive Asset/ Rate Sensitive Liability ratio ("RSA/RSL ratio") of .8 to 1.2, a gap to total assets ratio ("gap to TA") of 5%. Sequoia failed to meet any of these criteria, as the Bank had $3.45 million in brokered deposits, a liquidity ratio of 18%, a loan to deposit ratio of 95%, a RSA/RSL ratio of 1.44 and a 19% gap to TA at the December 31, 1992 examination review. (OCC exhibit 44, p. 1; OCC exhibit 63: Sander TR 81-82)

150. Examiner Sander had participated in approximately 60 examinations with the OCC. (Sander TR 32)

151. In examiner Sander's experience, Sequoia's attempt at funds management was probably the least successful that he had ever seen. Sequoia's excessively high level of interest rate risk continues to this day, its net interest margin has declined even further since December 31, 1992 (Sander TR 722-723), and the Bank is being "bled to death" by an over-reliance on volatile liabilities. (Sander TR 731)

XIII. Bank Responses to the Consent Order

152. Sequoia's responses to the Consent Order contained no liquidity contingency plan describing what would happen if volatile funds left the Bank, i.e., the timing of what would happen and what sources of funds would be used. The responses had no worst case scenario. (Sander TR 723-725; Sarsfield exhibit 5; Sarsfield exhibit 6)

(ER 52)

153. Sequoia's responses to the Consent Order did not specifically address interest-rate risk. (Sarsfield TR 711-715)

154. Examiner Sander reviewed Bank's Consent Order report, and found that the report contained schedules, but did not address the central theme of the Bank's reliance on volatile liabilities as a percentage of total deposits. (Sander TR 721; Sarsfield exhibit 5)

155. Sequoia's historical method of monitoring its liquidity position did not produce an accurate reflection of the Bank's liquidity position. (Sander TR 79-80; OCC exhibit 54)

156. A sources and uses type of format projects a bank's sources of funding and uses of funds over the near term, so it has a better understanding of what its liquidity needs will be. (Sander TR 80)

157. The OCC recommended to Sequoia at the June 30, 1992 examination that it adopt a sources and uses approach to liquidity. (Sander TR 80)

158. At its October 26, 1992 meeting, Sequoia's Compliance Committee noted that it needed to focus on encouraging management to provide a comprehensive and continuous system for monitoring liquidity. (OCC exhibit 26, p. 2)

159. At the October 28, 1992 meeting, the Board of Directors noted that volatile deposits would be a significant problem for the Bank in 1993, and that Respondent had been designated as responsible for shareholder/customer and public relations by the Board. (OCC exhibit 28)

160. At the November 24, 1992 Board meeting, it was noted that the Bank's projection showed a liquidity shortfall of close to $5 million through the end of April 1993, with a significantly higher need for liquidity beyond that. (OCC exhibit 33, p. 8)

161. At its December 3, 1992 meeting, the Compliance Committee meeting noted that the management's November liquidity report evidenced little change from previous submissions, that the projections were flawed and that the acting president acknowledged that his assumptions were not proper for the projections. (OCC exhibit 35, p. 2)

162. During September, October and November 1992, liquidity methodology was unchanged or only modified from previous reports. (OCC exhibit 36, p. 3)

163. Financial information contained in Sequoia's December 16, 1992 Board Report demonstrated a liquidity shortfall of $6.6 million for December 1992, a liquidity shortfall of $5.5 million for March 1993 and a shortfall of $6.3 million for June 1993. (Sander TR 77 and 83; OCC exhibit 53, p. 10)

164. The same Board Report, on the next page, contained the Bank's historical statement of its liquidity position, a net liquid assets to net liabilities ratio of 20.67%. This is inconsistent with the projected shortfall information contained on the previous page, showing that the historical formula does not provide an accurate reflection of the Bank's liquidity. (Sander TR 84; OCC exhibit 53, p. 11)

A. Consultant Catalano

165. Jeanine Catalano was a consultant hired by Sequoia in July 1992, to independently confirm the Bank's liquidity, and to make recommendations to improve the Bank. (Sander TR 86-87)

166. The Compliance Committee noted at its August 13, 1992 meeting that Catalano had found that the Bank's Liquidity Position was not consistent with that of the Bank's peer group. (OCC exhibit 19)

167. The Board of Directors of Sequoia first received her findings in August 1992. (Sander TR 87; OCC exhibit 21, p. 5)

168. At its September 5, 1992 meeting, the Compliance Committee noted that Consultant Catalano had presented her liquidity findings, and that out-of-area deposits were a particular concern. (OCC exhibit 23, p. 2)

169. Catalano's formal report summarized that Sequoia's liquidity position was of serious concern, with relatively small core deposits and an asset composition that was not very diverse. The poor liquidity position exposed the Bank to the risk of being unable to meet unanticipated cash flow needs. (OCC exhibit 62, p.2)

170. Examiner Sander agreed with Catalano's summary. (Sander TR 87)

171. Catalano recommended that the Bank update its funds management policy, and incorporate the provisions of the

policy into a strategic plan. (OCC exhibit 62, p.2)

172. Sequoia failed to update its funds management' policy and incorporate it into a strategic plan by December 31, 1992. (Sander TR 87-88)

173. Catalano recommended that Sequoia develop a contingency plan while its restructuring was being conducted. The plan should address any and all sources of funds in priority order, that can be drawn upon to meet unanticipated uses, including unusual deposit withdrawals. Catalano advised that the plan should also include a detailed description of the Bank's internal monitoring system, and an external communications system to inform regulators, large depositors, the press, and others, of the Bank's condition. (OCC exhibit 62, p.2)

174. Sequoia failed to develop this contingency plan as of December 31, 1992. (Sander TR 88)

175. Catalano expected Sequoia to sell and/or collect $5 million in loans and use the funds to reduce its volatile liabilities in the several months following September 30, 1992. (OCC exhibit 62, ppg. l-2)

176. Examiner Sander believed that this $5 million in loans would be a portion of Sequoia's home equity loan portfolio. (Sander TR 88)

177. Sequoia failed to sell the $5 million in loans as of December 31, 1992. (Sander TR 88)

178. Respondent was present at the October 28, 1992 Board of Directors Meeting. (OCC exhibit 27)

179. At the October 28, 1992 Compliance Committee meeting, Consultant Catalano noted that the Bank's asset/liability policy needed to be updated, and recommended diversification of the loan types, because of a high concentration of loans in Southern California. (OCC exhibit 28)

180. Catalano noted that brokered and out-of-area deposits could be pulled out of the Bank by telephone, that interest rates were not that high, and that a contingency plan needed to be prepared in the event concentrations of out-of-area deposits were pulled from the Bank. (OCC exhibit 28)

181. On November 9, 1992, the Compliance Committee noted that Respondent was reluctant to move forward with the consultant's recommendations. (OCC exhibit 29)

182. Respondent provided the Compliance Committee with mixed reports on the adaptation of Catalano's proposed liquidity methodology. (OCC exhibit 30)

183. At its December 3, 1992 meeting, the Compliance Committee noted that Catalano had expressed a disinterest in working with Respondent. (OCC exhibit 35, p.2, Sander TR 56-57)

B. Conclusion

184. Sequoia failed to develop and implement a program within forty-five (45) days of entering the Consent Order, for improving its liquidity position. (Sander TR 89, 742)

185. Sequoia failed to insure that a liquidity contingency plan was developed within sixty (60) days of entering into the Consent Order. (Sander TR 89, 741-742)

186. Sequoia failed to establish time limits on the use of volatile liabilities within thirty (30) days of entering into the Consent Order, and had not established such time limits by December 31, 1992. (Sander TR 90, 742)

187. As of December 31, 1992, Sequoia had failed to develop and implement a program for improving its liquidity position, and its liquidity level was not sufficient to sustain its current operations, and withstand extraordinary demand against its base. (Sander TR 90). As of December 31, 1992, the Bank was not in compliance with Article VI of the Consent Order. (Sander TR 90; Henning TR 768). As of December 31, 1992, the Bank was not in compliance with Article VII of the Consent Order. (Sander TR 90)

XIV. Loan Policy

188. Article IX of the Consent Order required Sequoia to review and revise its written loan policy within sixty (60) days, to incorporate the guidelines from the Handbook for National Bank Examiners, to correct deficiencies noted in the Report of Examination, as well as fifteen additional items listed in the Consent Order. (OCC exhibit 8, p.13; Sander TR 91)

(ER 52)

189. It is important to have an adequate loan policy because lending is a major function of a bank, with the Board being required to provide direction to the bank's affairs. A loan policy establishes guidelines to which the lending staff may adhere. If they do not adhere, the board is responsible for noting those exceptions. (Sander TR 92)

190. Sequoia produced a written loan policy revision. (OCC exhibit 65; Sander TR 93)

191. Sequoia's written loan policy revision was deemed inadequate upon review by the OCC. (OCC exhibit 153; OCC exhibit 12, p.A-7; Sander TR 93-94)

192. Sequoia did not revise its loan policy again before the December 31, 1992 examination, except to add a section on appraisal policy. (OCC exhibit 64; Sander TR 93). As of December 31, 1992, Sequoia was in noncompliance with Article IX of the Consent Order. (OCC exhibit 43, p.15; Sander TR 93; Henning TR 776)

193. Sequoia did not produce an acceptable loan policy within sixty (60) days of entering into the Consent Order. (OCC exhibit 12, p.A-16; OCC exhibit 43, p.15; OCC exhibit 153; OCC exhibit 64; Sander TR 91-94).

194. In noncompliance with the Consent Order, the policy that was produced was not approved by the Board of Directors. (OCC exhibit 153; OCC exhibit 64; OCC exhibit 12, p.A-16)

195. In noncompliance with the Consent Order, the policy had no requirement for updated financial information for problem loans, or for equity line annual reviews. (OCC exhibit 153; OCC exhibit 64; OCC exhibit 12, p.A-16; OCC exhibit 65)

196. In noncompliance with the Consent Order, the policy had no loan-to-value guidelines for commercial loans, land loans or standby letters of credit. (OCC exhibit 153; OCC exhibit 64; OCC exhibit 12, p.A-16; OCC exhibit 65)

197. In noncompliance with the Consent Order, the policy had no linking of maturities with repayment source, inadequate guidelines for loan distribution, and unreasonable maximum limits for loan types. (OCC exhibit 153; OCC exhibit 64; OCC exhibit 12, p.A-16; OCC exhibit 65)

198. In noncompliance with the Consent Order, the policy had no limit for land loans and no concentration limits for land loans. (OCC exhibit 153; OCC exhibit 64; OCC exhibit 12, p.A-16; OCC exhibit 65)

199. In noncompliance with the Consent Order, the policy had no requirements for documentation of the specific purpose of loans, and no statement of who is responsible for compliance with the policy. (OCC exhibit 153; OCC exhibit 64; OCC exhibit 12, p.A-16; OCC exhibit 65)

200. In noncompliance with the Consent Order, the policy called for annual instead of quarterly loan reviews, did not have the new BB 91-19 definition of "in process of collection," and needed to change its charge-off guideline from "principal and

interest past due six months" to "principal and/or interest past due six months." (OCC exhibit 153; OCC exhibit 64; OCC exhibit 12, p.A-16; OCC exhibit 65)

201. In noncompliance with the Consent Order, the policy had no loan administration program to correct identified weakness. (OCC exhibit 153; OCC exhibit 64; OCC exhibit 65)

202. In noncompliance with the Consent Order, the policy had no insider loan limit specifics. (OCC exhibit 153; OCC exhibit 64; OCC exhibit 12, p.A-16; OCC exhibit 65)

203. Sequoia's loan policy did not contain a requirement for Federal Financial Institutions Examination Council insider related interest forms. (Sarsfield TR 568)

204. The Consent Order specifically required a written conflict of interest policy complying with, at a minimum, the requirements of 12 C.F.R. Part 215 ("Regulation O"). (OCC exhibit 8, p.14)

205. Sequoia's loan policy did not adequately address requirements on Regulation O. (Sander TR 94)

206. The absence of detail in Sequoia's loan policy required the reader to thus refer to additional resources in order to understand what the requirements of the loan policy were. (Sarsfield TR 578-79)

207. An insider conflict of interest policy was particularly important at Sequoia in light of the Bank's history of insider violations. (OCC exhibit 12, p.A-19, A-21-22; OCC exhibit 4, p.10; OCC exhibit 2, p.A-1; OCC exhibit 154, p.A-1)

XV. Loan Portfolio Review

208. Article X of the Consent Order required that within 60 days, Sequoia must formulate and implement an effective and independent loan review program for the purpose of assuring the timely identification of problem loans in the Bank's portfolio. Article X also required that quarterly review with monthly updates be provided to the board. (Ragus TR 176-177; OCC exhibit 8, ppg.15-16)

A. Loan Classification

209. Loan portfolio management was considered an important part of the examination because of the severe loan administration problems identified at the June 30, 1992 examination. (Ragus TR 173; OCC exhibit 74)

210. During the December 31, 1992 examination, the OCC's examiners reviewed 41 loans representing approximately $12 million in loan commitments, or about one-third of Sequoia's loan portfolio. (Ragus TR 173; OCC exhibit 74)

211. At the December 31, 1992 examination, the OCC's examiners found that Sequoia's asset quality was poor, with total criticized loans representing approximately 270% of capital and total classified loans representing approximately 163% of capital. The examiner downgraded loans to 10 borrowers.

212. The Bank incurred a substantial operating loss in 1992, the first such loss ever incurred by the bank in its entire history. (Ragus TR 174-176; OCC exhibit 43, ppg.11-12; OCC exhibit 74)

(ER 52)

213. The main element of a loan review program is that it accurately grade the loans in the bank's loan portfolio in order to identify problems, and to determine the amount of credit risk and loss potential in the portfolio. (Ragus TR 177)

214. Sequoia's loan review program did not grade loans in the exact same fashion as did the OCC examiners. (Ragus TR 177; OCC exhibit 43, p.15; OCC exhibit 74)

215. During the December 31, 1992 examination, the OCC directed that Sequoia downgrade 10 of the 41 loans reviewed, or 21% of the total loan sample, totaling $2,565,000. (Ragus TR 179; OCC exhibit 127)

216. The California Properties loan was an insider-related credit. The borrower is a related interest of Bank Director Norman Krug, who was also the guarantor on the credit. The source of repayment was cash flow from the Hotel Californian, which was insufficient to service the debt. The borrower was severely delinquent on the first deed of trust and real estate taxes, city taxes, payroll taxes, and the ground lease. At the time of the December 31, 1992 examination, the loan was also on nonaccrual. The Bank's only collateral was a security interest in the hotel's furniture, fixtures and equipment. The guarantor provided no financial support for the credit. (Ragus TR 180-184; OCC exhibit 43, ppg.25-26; OCC exhibit 82)

217. As of the time of the December 31, 1992 examination, Sequoia classified the $282,000 loan to California Properties as doubtful. During the examination, the OCC's examiners directed that the loan be charged off as a loss. (Ragus TR 182, OCC

exhibit 43, p.23; OCC exhibit 128; OCC exhibit 129)

218. The Bank agreed to charge off the California Properties loan as a loss. (Ragus TR 184-185; OCC exhibit 152)

219. At the time of the December 31, 1992 examination, Sequoia did not classify the $86,500 loan to Borrower M. During the examination, the OCC downgraded the loan to substandard. (Ragus TR 187; OCC exhibit 43, p.24; OCC exhibit 128; OCC exhibit 129)

220. A substandard loan is a loan that contains well-defined weaknesses that could jeopardize payment of the debt. (Ragus TR 187)

221. At the time of the December 31, 1992 examination, there was no analysis of Borrower M's ability to obtain a construction loan and the borrower provided no financial support for the credit. (Ragus TR 185-188; OCC exhibit 108)

222. As of the time of the December 31, 1992 examination, Sequoia classified the $376,000 loan to Borrower L as other assets especially mentioned ("OAEM"). During the examination, the OCC downgraded the loan to substandard. (Ragus TR 192; OCC exhibit 43, p.23; OCC exhibit 128; OCC exhibit 129)

223. At the time of the December 31, 1992 examination, the loan to Borrower L was delinquent and placed on nonaccrual. The property securing the loan was located in a fire-damaged area, which may have affected its marketability. The Bank had also initiated foreclosure proceedings against the borrower. (Ragus TR 190-193; OCC exhibit 101)

224. As of the time of the December 31, 1992 examination, Sequoia classified the $194,000 loan to Borrower F and the $164,000 loan to Borrower O as OAEM. During the examination, the OCC downgraded these loans to substandard. (OCC exhibit 43, p.23; OCC exhibit 128; OCC exhibit 129; OCC exhibit 92)

225. As of the time of the December 31, 1992 examination, Sequoia did not classify the $263,000 loan to Borrower E. During the examination, the OCC downgraded the loan to substandard. (OCC exhibit 43, p.23; OCC exhibit 128; OCC exhibit 129; OCC exhibit 87)

226. As of the time of the December 31, 1992 examination, Sequoia did not classify the $150,000 loan to Borrower B. During the examination, the OCC downgraded the loan to substandard. (OCC Exhibit 43, p.23; OCC exhibit 128; OCC exhibit 129; OCC exhibit 81)

227. As of the time of the December 31, 1992 examination, Sequoia did not classify the $100,000 loan to Borrower PL. During the examination, the OCC downgraded the loan to OAEM. (OCC exhibit 43, p.24; OCC exhibit 128; OCC exhibit 129; OCC exhibit 106)

228. As of the time of the December 31, 1992 examination, Sequoia classified the loans to Borrower P, totaling

$450,000, as OAEM. During the examination, the OCC downgraded the loans to substandard. (OCC exhibit 43, p.24; OCC exhibit 128; OCC exhibit 129; OCC exhibit 111)

229. As of the time of the December 31, 1992 examination, Sequoia did not classify the $400,000 loan to Borrower G. During the examination, the OCC downgraded the loan to OAEM. (OCC exhibit 43, p.23; OCC exhibit 128; OCC exhibit 129; OCC exhibit 94)

230. As of the time of the December 31, 1992 examination, Sequoia did not classify the $100,000 loan to the Borrower K Trust. During the examination, the OCC downgraded the loan to OAEM. (OCC exhibit 43, p.23; OCC exhibit 128; OCC exhibit 129; OCC exhibit 103)

B. Consultant Cabell

231. Sequoia hired Consultant Roger Cabell of JRC Associates to conduct loan reviews in July 1992 and December 1992. (Ragus TR 189; OCC exhibit 43, p.15; OCC exhibit 74; Henning TR 777). The Bank did not hire Cabell within sixty (60) days of entering into the Consent Order. (Henning TR 778).

232. At its September 5, 1992 meeting, the Compliance Committee noted that Consultant Cabell had stated that Bank policies needed to be restated on the policies and process of approving loans presented to the Loan Committee and Board. (OCC exhibit 23)

233. At its September 5, 1992 meeting, the Compliance Committee noted that Cabell had stated that loan expectations and the ratio of classified loans is high at the Bank, by twice as much, when compared to peer. (OCC exhibit 23)

234. In the December 1992 review, Consultant

Cabell reviewed 38 loans, including an update of 15 loans that were previously reviewed. (Ragus TR 190; OCC exhibit 120, p.1)

235. In the December review, Cabell recommended that the loan to Borrower E be downgraded from pass to substandard, the loan to Borrower L from OAEM to substandard and the loan to Borrower R be downgraded from pass to OAEM. (Ragus TR 190; OCC exhibit 120, ppg.2, 4b, 4c and 4d)

236. As of the time of the December 31, 1992 examination, the Bank had not taken downgrades on the loans to Borrower E or Borrower L. (Ragus TR 190; OCC exhibit 128)

C. Problem Loan Reports

237. Many of the Bank's problem loan reports lacked purpose and repayment source information, proper cash flow analysis, adequate action plans, and timeframes. They lacked events that would trigger an upgrade or a downgrade in the credit and sufficient support for the ALLL allocations for the problem loans. (Ragus TR 194; OCC exhibit 121)

238. Some of the reports contained stale financial information and inadequate analysis of financial information. (Ragus TR 194; OCC exhibit 121)

239. The loan report for the California Properties loan did not note the original purpose of the loan. It contained an inadequate cash flow analysis. There were no timeframes in the action plan, and the ALLL allocation was not supported. (Ragus TR 195; OCC exhibit 121)

240. There was no problem loan report for the

loan to Borrower M because the Bank rated it a pass. (Ragus TR 195; OCC exhibit 121)

241. The problem loan report for the loan to Borrower L contained an inadequate cash flow analysis. It did not explain or support the ALLL allocation and it contained stale financial information. (Ragus TR 195; OCC exhibit 121)

242. There were deficiencies in many of the problem loan reports for other borrowers as well. (Ragus TR 195; OCC exhibit 121)

D. Conclusion

243. The OCC's examiners discussed their loan portfolio management findings with Bank management during the December 31, 1992 examination and Bank management did not disagree with their conclusions. (Ragus TR 196; OCC exhibit 122)

244. The importance of having an adequate loan review is to accurately grade the loan portfolio to determine the amount of credit risk in the portfolio. (Ragus TR 197)

245. Sequoia did have a loan review program, though it did not classify all loans exactly as did the OCC examiners. (Ragus TR 197)

246. Sequoia did not violate Article X of the Consent Order, as its loan review policy made good faith, reasonable efforts, at detecting credit risk within the portfolio. (OCC exhibit 12, p.A-16).

247. A loan that has demonstrated weaknesses ultimately can pay off. In this particular case virtually all of the loans classified ny OCC examiners eventually paid in full. (Ragus TR 267)

248. If a classified loan is paid in full, that does not necessarily mean that the classification was wrong. Loan classification is a subjective practice upon which reasonable minds may differ. (Ragus TR 267)

249. Deference is accorded to those classifications determined by OCC examiners, and in this instance Sequoia National accepted each of those determinations.

250. The OCC has not demonstrated a material inadequacy with the Sequoia loan review policy, to warrant a finding of noncompliance with Article X of the consent Order.

XVI. Allowance for Loan and Lease Losses

251. Article XII of the Consent Order required that the Board establish a program for the maintenance of an adequate ALLL. (Ragus TR 197; OCC exhibit 8, ppg.19-20)

252. The purpose of an ALLL is to estimate potential loan losses that would be taken in the future. (Ragus TR 197)

253. The two main requirements for an effective ALLL are accurate grading or risk rating of the loan portfolio and use of reasonable loss factors for loans or pools of loans. (Ragus TR 198)

254. It is important for a bank to document its process because without such documentation, the examiners cannot determine whether the loss factors used are accurate or reasonable.

(Ragus TR 198)

A. ALLL Methodology

255. It was important for Sequoia to have an adequate ALLL methodology. (Ragus TR 209; OCC exhibit 43; OCC exhibit 134)

256. The Bank's ALLL methodology was criticized at five of the previous six examinations, including the June 30, 1992 examination. (Ragus TR 208; OCC exhibit 12, p.A-17; OCC exhibit 43, p.16; OCC exhibit 134)

257. Sequoia's ALLL methodology was not adequate. (Ragus TR 198; OCC exhibit 43, p.16; OCC exhibit 134)

258. The Bank's ALLL methodology was not a reliable indicator of ALLL adequacy. (Ragus TR 200; OCC exhibit 43, p.16; OCC exhibit 134)

259. The Bank's calculation of its ALLL was unsupported. (Ragus TR 200; OCC exhibit 43, p.16; OCC exhibit 134)

260. The Bank relied on the use of specific loss factors in its ALLL calculation. (Ragus TR 200; OCC exhibit 135; OCC exhibit 137)

261. A loss factor is a percentage that is multiplied by a loan or pool of loans and that is supposed to estimate the amount of loss potential for that specific loan or pool of loans. (Ragus TR 200)

262. For example, the Bank's methodology used loss factors of 0.2% to 0.7% for home equity lines; 0.2% to 0.3% for

conventional mortgages; and 0.4% to 1.5% for commercial real estate loans. (Ragus TR 201; OCC exhibit 135; OCC exhibit 137)

263. The Bank's ALLL Policy does not explain or otherwise provide any support for the percentages used as loss factors in calculating the Bank's ALLL. (Ragus TR 202; OCC exhibit 43, p.16; OCC exhibit 134; OCC exhibit 135; OCC exhibit 137)

264. The Bank used a special additional allowance in its ALLL calculation. (Ragus TR 202; OCC exhibit 135; OCC exhibit 137)

265. A special additional allowance is an addition to the ALLL above the amounts required by the specific loss factors. (Ragus TR 202-203; OCC exhibit 135)

266. The Bank used percentages from 0.05% to 0.25% for its special additional allowance, using a matrix that designates a specific percentage based on factors such as off-balance sheet and credit risk, delinquencies and nonaccrual loans and the type of loan. (Ragus TR 203; OCC exhibit 135)

267. Neither the Bank's ALLL Policy nor any other Bank record stated how the Bank calculated these percentages or provided any support for them. (Ragus TR 203; OCC exhibit 43, p.16; OCC exhibit 134;.OCC exhibit 135; OCC exhibit 137)

268. The Bank's ALLL Policy had not been approved by the Board, but it was in use at the time of the December 31, 1992 examination. (Ragus TR 203; OCC exhibit 134)

269. The Bank's ALLL methodology did not account for undisbursed commitments. (Ragus TR 207; OCC exhibit 134; OCC exhibit 135; OCC exhibit 137; OCC exhibit 138)

270. The Bank's ALLL methodology did not take into account the large size of some credits. (Ragus TR 207; OCC exhibit 134; OCC exhibit 135; OCC exhibit 137; OCC exhibit 138)

271. The Bank's failure to take into account the large size of some loans was a concern because the Bank had a portfolio of large loans. Thus the portfolio lacked diversification. The Bank also had many equity lines secured by second deeds of trust behind large first deeds of trust, or large prior liens. (Ragus TR 208)

272. The Bank's practice was to include an unallocated portion of its ALLL. At year end 1992, it was $62,000. (Ragus TR 207; OCC exhibit 134; OCC exhibit 137; OCC exhibit 138)

273. Nothing in the Bank's ALLL Policy or any other Bank record provided any explanation of how the unallocated portion of the ALLL was calculated or otherwise provided support for it. (Ragus TR 207; OCC exhibit 134; OCC exhibit 135; OCC exhibit 136; OCC exhibit 137; OCC exhibit 138)

B. Consultant Cabell

274. The Bank hired a consultant, JRC Associates, to assist them in developing an ALLL methodology. (Ragus TR 204; OCC exhibit 136)

275. At its September 30, 1992 meeting, the Compliance Committee noted that Consultant Cabell of JRC Associates found that there was still room for criticism by the OCC of the Bank's ALLL reserve methodology. (OCC exhibit 24)

276. The Bank's ALLL Policy did not address criticized loans. (OCC exhibit 134; OCC exhibit 135)

277. The Bank adopted Consultant Cabell's recommendations regarding the use of minimum loss factors for criticized loans. (Ragus TR 205; OCC exhibit 134; OCC exhibit 136; OCC exhibit 137)

278. Consultant Cabell recommended a minimum loss factor of 1.5% for loans graded "other mention;" a range from 4% to 15% for loans graded substandard; and a minimum loss factor of 50% for loans graded doubtful. (Ragus TR 205; OCC exhibit 136)

279. Neither Consultant Cabell's report, the Bank's ALLL Policy nor any other Bank record explained how the minimum loss factors for criticized loans were derived or otherwise provided support for the factors. (Ragus TR 205-206; OCC exhibit 134; OCC exhibit 135; OCC exhibit 136; OCC exhibit 137)

280. Other than higher loss factors for substandard loans, there was little or no improvement in the Bank's ALLL methodology from the time of the June 30, 1992 examination,

because the loss factors were unsubstantiated. (Ragus TR 208-209; OCC exhibit 43, p.16; OCC exhibit 134)

D. Respondent's Inadequate Responses

281. Sequoia's March 11, 1992 ALLL Report does not support Respondent's contention that the Bank was in compliance with Article XII of the Consent Order because it does not state an adequate basis for calculating an ALLL. (Ragus TR 752; Sarsfield exhibit 1)

282. The reliance on an analysis of collateral in determining the ALLL in Respondent's March 11, 1992 ALLL report was flawed because of the Bank's weak appraisal process. (Ragus TR 752; Sarsfield exhibit 1)

283. During the June 30, 1992 examination, the Bank was cited for five violations of the OCC's appraisal regulation. Many of the appraisals were stale and appraised the collateral at a time when property values in California were higher. (Ragus TR 752; OCC exhibit 12, p.A-23)

284. Sequoia's March 11, 1992 ALLL Report did not take the problems with the Bank's appraisal process into consideration and did not consider that some of the collateral should have been reevaluated either through new appraisals or by the Bank. (Ragus TR 752; Sarsfield exhibit 1)

285. In Sequoia's March 11, 1992 ALLL Report, both other mention loans and substandard loans had loss factors of 2.5%. This is illogical because, by definition, a substandard loan has a greater amount of risk, or greater loss potential than an other mention

loan. In other words, the loss factor for substandard loans should be higher than that for other mention loans. (Ragus TR 753; Sarsfield exhibit 1)

286. Sequoia's March 11, 1992 ALLL Report was flawed because it did not provide support for the various loss factors used and why they are appropriate for Sequoia. (Ragus TR 753; Sarsfield exhibit 1)

287. Sequoia's March 11, 1992 ALLL Report does not address undisbursed commitments. This is problematic because the Bank has committed to lend those funds to the borrower at the borrower's convenience. Even though they are undisbursed at the present time, they could be disbursed and could be part of a loan balance in the future. (Ragus TR 753-754)

288. Sequoia's June 30, 1992 ALLL Analysis does not support his contention that the Bank was in compliance with Article XII of the Consent Order. (Ragus TR 754; Sarsfield exhibit 5)

289. The conclusion in Respondent's June 30, 1992 ALLL Analysis was wrong. (Ragus TR 754; Sarsfield exhibit 5)

290. The conclusion in Sequoia's June 30, 1992 ALLL Analysis is that the ALLL should be $650,000. However, as of June 30, 1992, $650,000 was not sufficient to cover the Bank's loan losses for the fourth quarter of 1992 (Sarsfield TR 627-628), which were $692,000. In other words, the Bank's losses in the fourth quarter of 1992 alone exceeded the Bank's ALLL by $42,000. These losses were incurred shortly after the Respondent's June 30, 1992 ALLL Analysis was done. (Ragus TR 755; Sarsfield exhibit 5)

E. Conclusion

291. The OCC's examiners discussed the shortfall in the Bank's ALLL and the deficiencies with its ALLL methodology with Respondent Sarsfield, Director Puccinelli and Director Granholm during the June 30, 1992 examination. (Ragus TR 755)

292. During the June 30, 1992 examination, the Bank made a $100,000 provision to the ALLL after the meeting with the OCC's examiners and the OCC required an additional $250,000 provision when the Board meeting was held in August of 1992. (Ragus TR 756)

293. The Bank absorbed almost $700,000 in loan losses, added $100,000 to the ALLL voluntarily and was directed to add another $250,000 by the OCC in 1992. So, an adequate ALLL on June 30, 1992 should have been at least $1 million. (Ragus TR 756)

294. The OCC's examiners reviewed the Bank's ALLL methodology again at the December 31, 1992 examination and again found it to be inadequate. (Ragus TR 757; OCC exhibit 134; OCC exhibit 135)

295. It's the Board's responsibility to maintain an adequate ALLL and the way to do it is by having a reasonable ALLL methodology. (Ragus TR 763-764)

296. The Bank was not in compliance with Article XII of the Consent Order. (Ragus TR 208; OCC exhibit 43, p.16; OCC exhibit 134; OCC exhibit 135; OCC exhibit 137; OCC exhibit 138)

XVII. Credit and Collateral Exceptions

297. Article XIII of the Consent Order required the Board to obtain current and satisfactory credit information and proper collateral documentation on all loans. It also required the Board to obtain adequate credit information and analysis of such information on all new and renewed loans. (Ragus TR 209; OCC exhibit 8, ppg.20-21)

298. The Bank did not comply with Article XIII of the Consent Order. (Ragus TR 209; OCC exhibit 43, p.16; OCC exhibit 139)

299. Approximately 75% of the loans reviewed during the December 31, 1992 examination had exceptions that represented noncompliance with Article XIII of the Consent Order. (Ragus TR 211, OCC exhibit 43, p.16; OCC exhibit 139)

300. Of the 41 loans that were reviewed at the December 31, 1992 examination, 26 had financial statement and/or collateral exceptions and one loan had only a collateral exception. In all, 27 of the 41 loans reviewed had either a financial statement or a collateral exception in noncompliance with the Consent Order. Loans to three other borrowers were also in noncompliance with the Consent Order, for a total of 30 loans totaling approximately $9,150,000. (Ragus TR 213-214; OCC exhibit 139)

301. Many of the loans in noncompliance with Article XIII of the Consent Order were problem loans. The credit files for some of these problem loans did not have updated financial information and neither the credit files nor the problem loan reports contained adequate cash flow or repayment source analysis. (Ragus TR

214; OCC exhibit 139)

302. Of the six new loans or renewals reviewed at the December 31, 1992 examination, 4 had inadequate cash flow analyses. These were loans that were either made or renewed or extended after the date of the Consent Order. (Ragus TR 214-215; OCC exhibit 139)

303. The Bank had also been criticized at the June 30, 1992 examination for excessive financial statement and collateral exceptions. (Ragus TR 215; OCC exhibit 12, p.A-17)

304. It's important for a Bank to have updated financial information and appropriate analysis of that information in order to determine whether the repayment source for a loan is adequate and in order to monitor the credit. (Ragus TR 215)

305. The Bank's Board of Directors is ultimately responsible for proper management of the Bank and compliance with the Consent Order. (Ragus TR 268)

XVIII. Capital

306. Article XV of the Consent Order required that Sequoia maintain Tier 1 capital to risk-weighted assets of 8%, as well as a leverage ratio of 5%. (Sander TR 95; OCC exhibit 8, p.22)

307. At all times relevant herein, with one exception, the Bank maintained capital in excess of the 8 percent minimum required by the consent order.

308. As a result of certain adjustments made at the December 31, 1992, examination, the bank's tier 1 capital ratio dropped to 7.1 percent. (OCC exhibit 67; OCC exhibit 68; OCC exhibit 69; OCC

exhibit 73)

309. The sole reason for the decrease in the capital ratio was because of the OCC adjustments.

310. By May of 1993, Sequoia sold certain assets, and promptly replenished the capital account, curing the temporary shortage caused by the accounting adjustments ordered by the OCC. (Sarsfield exhibit 33)

311. Sequoia was not in violation of the tier 1 capital ratio set forth in Article XV of the Consent Order. (Sander TR 97; OCC exhibit 67, p.2)

XIX. Respondent's Ability to Pay

312. Respondent has the ability to pay the entire $15,000 assessment. (Joint exhibit 1)

V. CONCLUSIONS OF LAW

I. Jurisdiction

1. At all times relevant herein, Sequoia was an "insured depository institution" within the meaning of 12 U.S.C. §§ 1813(c) and 1818(i).

2. At all times relevant herein, the OCC was the "appropriate Federal banking agency" regarding the Bank, pursuant to 12 U.S.C. §§ 1813(q) (1) and 1818(i) (2) (E).

3. At all times relevant herein, Respondent served as a director of Sequoia, and was an "institution-affiliated party" of Sequoia within the meaning of 12 U.S.C. § 1813(u) and 1818(i).

II. As of December 31, 1992 Sequoia was in Noncompliance with the Consent Order

A. Liquidity and Volatile Liabilities

4. As of December 31, 1992, the Bank was in noncompliance with Articles VI and VII of the Consent Order.

B. Loan Policy

5. As of December 31, 1992, the Bank was in noncompliance with Article IX of the Consent Order.

C. Allowance for Loan and Lease Losses

6. As of December 31, 1992, the Bank was in noncompliance with Article XII of the Consent Order.

D. Credit and Collateral Exceptions

7. As of December 31, 1992, the Bank was in noncompliance with Article XIII of the Consent Order.

III. Respondent's Nexus to Sequoia's Noncompliance

8. Respondent caused, brought about, participated in, aided and abetted Sequoia's noncompliance with Articles VI, VII, IX, XII, and XIII of the Consent Order at the December 31, 1992 examination.

IV. The Penalty

9. A sufficient legal basis exists for the assessment of a civil money penalty against Respondent William C. Sarsfield in the amount of $10,000.

So Ordered, this 3rd day of February, 1995.

/s/ Arthur L. Shipe

ARTHUR L. SHIPE

Administrative Law Judge

Date: February 3, 1995

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY

OCC-AA-EC-93-144

IN THE MATTER OF William C. Sarsfield, Former Chairman of the Board and Current Director,
Kent D. Glover, Former President and Current Director,
Charles Puccinelli, Peter P. Bolles, Thomas J. Niedermeyer, Sr.,
Richard C. Van Valer,
Former Directors,
John F. Henning, Jr., Norman I. Krug, Current Directors
Sequoia National Bank, San Francisco, California

Proposed Order
Assessment of Civil Money Penalties

On November 20, 1993, the Comptroller of the Currency of the United States of America issued a Notice of Assessment of Civil Money Penalty against Respondent, William C. Sarsfield, former Chairman of the Board and Current Director of the Sequoia National Bank, San Francisco, California, charging him with violation of an order to cease to desist, issued pursuant to 12 U.S.C. § 1818(b).

The Respondent duly filed an Answer to the allegations in the Notice, and requested an administrative hearing pursuant to 12 U.S.C.

§ 1818(i), and the Comptroller's Rules of Practice and Procedure, 12 C.F.R. § 19.

The matter was heard before Administrative Law Judge Arthur L. Shipe during the period June 7 - 10, 1994, in San Francisco, California.

The Comptroller, having considered the evidence presented at the hearing, and the briefs and arguments of both counsel, and the Recommended Decision issued by the presiding Administrative Law Judge;

HEREBY ORDERS, that Respondent William C. Sarsfield be assessed a civil money penalty on the amount of ten thousand dollars ($10,000) .

Comptroller of the Currency

UNITED STATES OF AMERICA

DEPARTMENT OF THE TREASURY

OFFICE OF THE COMPTROLLER OF THE CURRENCY

OCC-AA-EC-93-144

IN THE MATTER OF William C. Sarsfield, Former Chairman of the Board and Current Director,

Kent D. Glover, Former President and Current Director,

Charles Puccinelli, Peter P. Bolles, Thomas J. Niedermeyer, Sr., Richard C. Van Valer,

Former Directors,

John F. Henning, Jr., Norman I. Krug, Current Directors

Sequoia National Bank, San Francisco, California

CERTIFICATE OF SERVICE

The complete Record of the above proceeding consists of the following materials:

Two (2) Filed Volumes of Pre-Hearing Pleadings

One (1) Filed Volume of Post-Hearing Pleadings

Three (3) Hearing Transcripts with Exhibits

On February 3, 1995, I caused to be served upon the following parties, the matters described below.

By personal service, the complete original Record of this proceeding upon:

Hearing Clerk, Office of the Comptroller of the Currency
250 E Street SW
Washington, DC 20219

And by the same method, a copy of the Recommended Decision upon:

Mr. Michael G. Bloise, Esq.
Mr. Daniel P. Stipano, Esq.
Enforcement and Compliance Division office of the
Comptroller of the Currency
250 E Street SW
Washington, DC 20219

And by Federal Express Delivery, a copy of the Recommended Decision upon:

Mr. Michael W. McCann, Esq.
Cappello & McCann
831 State Street
Santa Barbara, California 93101

Dated this 3rd day of February, 1995, at Washington, DC.

/s/ Gerald J. Langan
GERALD J. LANGAN
Law Clerk to Judge Arthur L.
Shipe Administrative Law Judge

[Filed Aug. 12, 1994]

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY

No. AA-EC-93-144

IN THE MATTER OF: WILLIAM C. SARSFIELD, Former Chairman of the Board and Current Director; KENT D. GLOVER, Former President and Current Director; CHARLES PUCCINELLI, PETER P. BOLLES, THOMAS J. NIEDERMEYER, SR., and RICHARD C. VAN VALER, All Former Directors; JOHN F. HENNING, JR., and NORMAN I. KRUG, Current Directors, of SEQUOIA NATIONAL BANK, San Francisco, California

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Proposed Findings of Fact and Conclusions of Law by Respondent William C. Sarsfield

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Attorneys for Respondent
William C. Sarsfield

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Respondent William C. Sarsfield (hereinafter "Respondent") respectfully submits the following proposed findings of fact and conclusions of law in defense of the proposed civil money penalty assessment of $15,000 against him.

I

INTRODUCTION

The OCC has the burden of proving (1) that there was a material noncompliance with Articles VI, VII, IX, X, XII, XIII and XV of the March 3, 1992 Consent Order, (2) that Respondent caused, brought about, participated in, counseled or aided and abetted the material noncompliance, and (3) that consideration of the statutory factors in 12 U.S.C. § 1818(i) support the assessment of a $15,000 penalty against Respondent. (TP 18:21-19:3)[1]

Respondent respectfully submits that the OCC failed to introduce any substantial evidence of Sequoia National Bank's (hereinafter "Bank") noncompliance in any material respect with any of the Articles of the Consent Order which are at issue. Instead, the OCC introduced only the subjective "opinions" of non-compliance by its examiners (Mr. Sander and Mr. Ragus). However, those opinions were unsupported by a single credible objective factor. The OCC

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[1]All citations to testimony at the trial on June 6-10, 1994 are by reference to the page and line numbers in the Transcript of Proceedings which will be abbreviated "TP"; references to exhibits introduced into evidence by the OCC will be identified as "OCC 1" *et seq.*; Citations to Respondents exhibits will be referenced as "WS 1" *et seq.*

witnesses were unable to identify any specific objective criteria of noncompliance, and instead offered little more than semantic criticisms of the exhaustively detailed monthly reports prepared and submitted by Respondent (WS 1,2,3,4,5 and 6) in compliance with the Consent Order. These purely semantic criticisms amounted to nothing more than a classic case of elevating form over substance.

Respondent proved at trial that in several critical respects the OCC's conclusions of noncompliance were based on:

1. Review and analysis of outdated and superseded bank asset and liability management policies;

2. Reliance upon inaccurate and misleading "reports" surreptitiously supplied to the OCC by director Henning[2]; and,

3. Reports from the Bank's Compliance Committee prepared by director Bolles (and orchestrated by Henning) several weeks after Bolles had been dismissed from the Board of Directors.

Even more disturbing was the testimony of Henning offered by the OCC in which he candidly admitted that he was engaged since 1991 in a personal vendetta to "get rid of" Respondent (TP 797:15-19), in which he "got in bed" with the OCC as far back as 1991 for that purpose (TP 798:15-21), that he surreptitiously forged and submitted to the OCC false and misleading "reports" in OCC format

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[2] The court will recall Mr. Henning's bizarre behavior on the witness stand, exceeded only by the bizarre nature of his testimony in which he candidly admitted his hate of Respondent and his personal vendetta (in collaboration with the OCC) against Respondent from 1991 forward.

to disguise their real source (TP 784:3-789:14), and that he would do and say anything to get rid of Respondent (TP 808:13-809:3). In fact, when confronted at trial with the Report of the Special Litigation Committee of the Board of Directors at Sequoia National Bank (WS 36), which found Henning's denials of his breach of fiduciary duties as counsel to the Board of Directors to be "unconvincing" (TP 816:4-817:3; WS 36, at p. 45), Henning went so far as to exclaim that he was "proud of what they [the Board of Directors] said" (TP 819:4). He even claimed his breach of fiduciary duties to the Bank to be broader than his sordid involvement in secretly counseling an ex-Bank employee (Beverly Williams) to bring bogus legal claims against the Bank. (TP 818:9-12).

The OCC itself admitted in its Prehearing Statement that its two star witnesses (Henning and Bolles) were members of a minority faction on the Bank's Board which " . . . acted as a roadblock . . . taking solace in their outsider status and refusing to work with the majority to alter the Bank's policies and practices . . . The minority group . . . equated anything that was beneficial to the majority group with a detriment to the Bank. This simplistic mathematics ignores the reality that the primary duty of the minority group directors during the period of noncompliance was to attempt to achieve compliance with the Consent Order, not to attempt to thwart any initiative which might have the secondary effect of allowing the majority group to retain effective control of the Board." (OCC Prehearing Statement pp. 10-11) This candid admission by the OCC that any alleged noncompliance was the result of the campaign waged by Henning and

Bolles (who were the driving force on the Compliance Committee during the relevant time period) to intentionally thwart Respondent's efforts to comply with the Consent Order is difficult to reconcile with the evidence that came out at trial of the "deal" between the OCC and Henning/Bolles to reduce their assessments from $5000 to $950, obviously designed to buy their "cooperation" and testimony (TP 803:7-806:3). In fact, in order to apply maximum pressure, the OCC held off actually signing the "deal" with Henning/Bolles until after they "performed" at the trial (TP 804:3-4). The OCC subsequently kept their part of this questionable "deal", filing the required notice of the settlement several weeks after the trial, as referenced in Mr. Bloise's correspondence to the Honorable Arthur L. Shipe, dated June 16, 1994. (Judicial Notice is requested of this correspondence, filed herein on or about June 16, 1994 and attached hereto as Ex. A.)

In sum, as the summary of evidence below will establish, the OCC failed to carry its burden of proof at the trial. Instead, the evidence demonstrated that the OCC instead allowed itself to become an accomplice in Henning's personal vendetta against Respondent, allowing itself to be misled by Henning's intentionally false forged "reports", and relying upon outdated documents.[3]

The OCC's case, so lacking in substance and credibility,

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[3] In fact, the OCC did not event attempt to refute Henning's revelation that in August of 1992 the OCC admitted to Bolles that their real purpose for the Consent Order was to get rid of Respondent. (TP 797:20-798:19).

stands in stark contrast to the exhaustive, detailed presentation of evidence by Respondent demonstrating his extraordinary efforts from March 3, 1992 forward to insure that the Bank complied with the Consent Order. Respondent reduced his salary 20%, and increased his hours to approximately 60 hours a week during this time period, while he worked almost exclusively to insure compliance. (TP 296:9-23). In August 1992, recognizing that the Henning/Bolles minority faction would continue to undermine the Bank's efforts at compliance with the Consent Order as long as he remained in office (which the OCC acknowledges in its Prehearing Statement), Respondent prepared a proposed "action plan" setting forth the direction the Bank should continue to take to insure compliance with the Consent Order, caused it to be adopted by the Board, and resigned from active participation in the management of the Bank. (TP 290:7-293:12). Within a few days Respondent was hospitalized, having lost approximately half his blood due to ruptured ulcers. (TP 298:1-10) The OCC's own witness (Bolles) admitted that the proposed action plan submitted by Respondent in August of 1992, if adequately implemented by management, would have responded to all the issues in the Consent Order. (TP 831:3-832:20).[4] At trial Mr. Sander

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[4] Interestingly, at trial Henning tried to usurp to himself credit for the action plan prepared and submitted to the Board by Respondent, even testifying that Respondent resisted implementation of that plan. (TP 770:1-771:3). This testimony was flatly contradicted by Henning's client and cohort Bolles. (TP 831:3-832:20).

admitted that there was never any occasion when he asked Respondent for any information that he failed to give, nor could he think of any example of ever asking Respondent to do anything that he refused to do. (TP 152:20-25). Mr. Ragus admitted that he was not dealing with Respondent on compliance issues after August of 1992. (TP 233:5-8). Mr. Sander admitted that Respondent was "no longer involved in management after August 1992 (TP 734:23-735:2) and was not "involved with the Compliance Committee or compliance with the Consent Order" as of December of 1992. (TP 104:19-22).

II

ARGUMENT AND PROPOSED FINDINGS

A. ISSUE NO. 1: Did the Bank Comply With Articles VI and VII of the Consent Order? If Not, Did Respondent Cause, Bring About, Participate In, Counsel or Aid and Abet Noncompliance.

ARGUMENT

In its Notice of Assessment with respect to Article VI, the OCC contends that Respondent caused, aided and abetted, etc. an alleged failure by the Bank ". . . to immediately increase or maintain the liquidity of the Bank to a level which was sufficient to sustain the Bank's current operations and to withstand any anticipated or extraordinary demand against its funding base; failed to develop and implement a program to improve the Bank's liquidity position within forty-five (45) days of entering into the Order; and, failed to ensure

that a liquidity contingency plan was developed within sixty (60) days of entering into the Order."

On Article VII, the OCC contends in the Notice of Assessment that Respondent caused, aided and abetted, etc. an alleged failure by the Bank ". . . to adopt and implement a plan, with specific time frames, to reduce the Bank's reliance on volatile liabilities through the development of alternative funding sources and failed to establish time limitations on the use of the volatile liabilities as a funding source within thirty (30) days of entering into the Order."

The OCC presented its case on Articles VI and VII through the testimony of Mr. Sander. Mr. Sander testified that the Bank was not in compliance with Articles VI and VII (TP 66-90). However, other than his own subjective "opinion" of noncompliance, Mr. Sander identified very few objective criteria/factors in support of that opinion. The few objective criteria he did rely upon turned out to be, by his own admission, seriously flawed.

For example, Mr. Sander identified OCC 63 as the "asset and liability management policy that was prepared by Sequoia National Bank", that he reviewed at the December 31, 1992 examination to conclude that the Bank was not in compliance with Articles VI and VII. (TP 81:2-19; TP 103:16-105:7).

On cross-examination, Mr. Sander acknowledged that OCC 63 had been prepared all the way back in 1986 and he was unaware that it had been substantially revised by the Bank in 1991. (TP 105:8-108:9). Mr. Sander agreed that if in fact OCC 63 had been substantially revised by the Bank in 1991, then the conclusions

reached by the OCC on Articles VI and VII based on that Exhibit were "flawed." (TP 108:10-23). Respondent thereafter established that OCC 63 was an outdated policy not in effect in 1992 and superseded by several Board resolutions updating the Bank's asset and liability management policy in 1991. (TP 338:11-340:16; WS 42; TP 494:4-495:18; WS 39). As a result, OCC 63, upon which the OCC had relied to conclude noncompliance with Articles VI and VII, was not even an operative document in the Bank in 1992.

In a similar vein, Mr. Sander admitted on cross-examination that OCC 141 (the "report" prepared by Bolles several weeks after being dismissed from the Board in March of 1993) was also relied upon by the OCC in preparing the December 1992 Report of Examination which led to the Notice of Assessment. (TP 110:15-111:10). Mr. Sander subsequently admitted that the OCC did not, but should have, taken into consideration the fact that OCC 141 was not an official Bank response, but a "report" by a "disgruntled and voted-out-of-office member of the minority faction of the Board", in deciding how much weight should have been given to the information in that document. (TP 113:18-114:13).[5]

Another objective factor that Mr. Sander identified as evidence of noncompliance with Articles VI and VII was the Bank's

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[5] In fact, much of the information in the Bolles "report" was false and misleading and obviously submitted in furtherance of the Henning/Bolles effort to enlist the OCC in their vendetta against Respondent. (TP 331:7-333:9; WS 24,25,26; TP 519:22-524:8; WS 29).

alleged failure to "sell and/or collect $5 million in loans." (TP 88:4-19). On cross-examination, Mr. Sander admitted to having no knowledge of the Bank having sold loans and acknow-ledged that he would have to reevaluate his conclusion of noncompliance if he learned that the Bank had in fact sold some loans in 1992. (TP 119:10-120:17).[6] On direct, Respondent identified the plan that was formulated immediately upon execution of the Consent Order for the sale of loans, and the fact that those loans were sold in 1992. (TP 347:6-350:17). Clearly Mr. Sander's opinions of noncompliance should be "reevaluated" in light of this important information of which he was inexplicably unaware.

With respect to the Bank's liquidity, Respondent presented evidence which established that the Bank maintained its liquidity at a level of 15% or higher throughout 1992. (TP 128:18-129:3). Mr. Sander admitted that the OCC never took the position that this 15% ratio was not adequate to maintain the liquidity of the Bank to a level sufficient to sustain the Bank's current operations. (TP 129:15-19). Instead, Mr. Sander clung steadfastly to his conclusion that the Bank did not maintain an adequate liquidity, without ever explaining why

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[6] For some reason Mr. Sander was himself confused regarding exactly what was required of the Bank under Article VI. At one point he testified that the Consent Order required the sale of loans within 45 days (TP 140:20-23) but then backtracked and stated that all that was necessary was that a "plan" for the sale of these loans be in place within 45 days. (TP 142:1-9).

he so concluded or how that conclusion could be substantiated.

In a similar vein, Mr. Sander testified that the only thing to his knowledge done by Respondent to comply with Article VII (dependence on volatile liabilities such as out of area deposits over $95,000) was that "he [Respondent] mentioned that he knew some of the borrowers and worked with them so that they would not withdraw their funds from the Bank." (TP 132:6-14; 134:23-135:5). Mr. Sander indicated that he was " . . . not aware of a significant reduction" in volatile deposits during 1992 attributable to Respondent's efforts. (TP 135:10-16). When confronted with the possibility that Respondent had in fact reduced volatile deposits at the Bank in 1992 by $8,000,000 (approximately 25%), Mr. Sander still would not agree that that represented a good faith effort by Respondent to comply with Article VII, although he could not come up with any specific dollar figure by which he contends Respondent should have reduced volatile deposits. (TP 137:2-20) Instead, Mr. Sander was forced to fall back on his own "interpretation" of Article VII ". . . to mean that there should be an analysis of what the maturity schedule for deposits means to the Bank, the impact of that." (TP 147:17-19). Mr. Sander contended that no such analysis was presented.

In response, Respondent went through a detailed explanation of those sections of the first monthly report following execution of the Consent Order (WS 1) showing exactly where that "analysis" was presented (TP 355:22-360:3). The relevant portions of WS 1 contained a section entitled "Analysis of The Continuing Availability

and Volatility of Present Funding Sources" (TP 356:12-14), analysis of when certain deposits were anticipated to mature or be withdrawn (TP 357:12-358:17), and an analysis of the impact of the sale of loans and the availability of lines of credit (TP 359:2-15). Respondent provided additional detailed analysis of the Bank's compliance with Articles VI and VII through a description of the subsequent monthly reports that he prepared and submitted to the OCC through August of 1992. (TP 386:17-404:11; 419:19-445:20; WS 1,2,3,4,5 and 6.)

In sum, the OCC did not carry its burden of proof with respect to the alleged noncompliance with Articles VI and VII. The only objective criteria they could point to were shown to be the result of reliance upon inaccurate "reports" sent in by ousted members of the "minority faction", and an outdated and inoperative Bank asset and liability management policy. In addition, Mr. Sander was shown to be inadequately informed with respect to most of what Respondent had accomplished in compliance with these Articles.

PROPOSED FINDINGS OF FACT

1. The Bank was in material compliance with Articles VI and VII of the Consent Order at all relevant times;

2. Respondent did not cause, bring about, participate in, counsel, or aid and abet any noncompliance.

PROPOSED CONCLUSION OF LAW

The OCC did not carry its burden of proof to establish the requisite statutory factors necessary to support the assessment of any civil money penalty against Respondent.

B. **ISSUE NO. 2: Did the Bank Materially Comply With Article IX? If Not, Did Respondent Cause, Bring About, Participate In, Counsel or Aid and Abet Noncompliance.**

ARGUMENT

With respect to Article IX, the OCC sought to prove at trial that Respondent caused, aided and abetted, etc. the Bank's alleged failure ". . . to revise its written loan policy within sixty (60) days of entering into" the Consent Order. (Notice of Assessment of Civil Money Penalty, I. 4, ¶ (5), attached hereto as Exhibit B and incorporated herein by this reference.)

At trial, the OCC conceded that the Bank had adequately revised the sections of its loan policy dealing with appraisal methodology. (TP 93:16-19). The evidence at trial thus focused only upon the Bank's efforts with respect to improving its written loan policies relating to the lending function at the Bank, and the OCC's criticisms thereof.

The Bank had hired Victor Granholm in 1991 for the specific purpose of developing revised loan policies which would satisfy the OCC. (TP 451:7-19). In January of 1992 the Bank had submitted a new revised loan policy. (TP 447:4-13; OCC 65). On February 26, 1992 Mr. Sander wrote to the Bank and in essence accepted the revised loan policy, with certain comments. (TP 405:22-406:2; OCC 7). At trial, Respondent identified in detail the provisions in OCC 65, the revised loan policy, dealing with the OCC's previous criticisms on

loan policy. (TP 407:2-419:9)[7]

On March 3, 1992, Respondent and other members of the Board met with the OCC. At that meeting, the OCC representatives acknowledged the Bank's material compliance with loan policy revision requirements, as confirmed by the minutes of that meeting. (TP 278:23-279:7; WS 35). On March 12, 1992 the Bank's counsel (Edward Mevi, who testified at trial) sent a letter to the OCC confirming their acknowledgment at the March 3rd meeting that the Bank was in compliance with Article IX. (TP 365:25-369:6; WS 16).

Following execution of the Consent Order (effective March 9, 1992), Respondent prepared and submitted the first required monthly report (WS 1) confirming the Bank's understanding, as expressed in the March 12, 1992 letter from Mr. Mevi (WS 16), that the Bank was already in compliance with Article IX. (TP 447:15-448:19). The April 8, 1992 report (WS 1) further acknowledged the Bank's understanding that the OCC had reserved the right to make further comments and observations on the Bank's loan policy. (Ibid.)

Later in April of 1992 the Bank received a letter from the OCC requesting certain additions to the loan policy. (TP 448:24-

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[7] This testimony, and OCC 65, also dealt at length with the Bank's detailed policy requirements for obtaining updated financial information on borrowers (where legally possible), which also dealt with the OCC's allegations of violation of Article XIII, i.e., purported " . . . failure to obtain current and satisfactory credit information on all loans lacking such information . . . ."

449:1). The Bank immediately responded with a special interim report from the Compliance Committee dated May 27, 1992 including the additions requested by the OCC. (TP 449:2-12; WS 4).

It is important to note that from January 1992 forward the Bank had ceased all lending activities in order to focus all of its efforts on compliance with the Consent Order. Consequently, the Bank (i.e., Mr. Granholm) had made the decision to defer further work on revising the loan policy (especially in light of the OCC's apparent acceptance of the revisions to that policy as of April of 1992) and focus his efforts on revising the Bank's appraisal methodology. Mr. Granholm had discussed this "prioritization" of his duties with both the Compliance Committee and the OCC. (TP 488:5-489:17). It was undisputed at trial that Mr. Granholm had made the OCC aware of this "prioritization" and that the OCC had approved it back in 1992. (TP 489:18-491:16; WS 11). Mr. Ragus admitted on cross-examination that he at least had to "partially agree" that this "prioritization" made sense in light of the fact that the Bank had ceased all lending activities. (TP 250:24-251:9).

Ironically, due to the successful collaboration between the Henning/Bolles minority faction and certain personnel of the OCC which forced Respondent to cease his active participation in management of the Bank after August of 1992, Mr. Granholm was required to assume the post of interim president, which took up even more of his time and made it impossible to focus on further revisions to the loan policy until December of 1992 when a new interim president was appointed. (TP 490:7-24). By the end of December,

Mr. Granholm had completed a draft of the loan policy revisions and submitted it to the temporary president (Pat Collins), a fact of which Mr. Ragus was aware. (TP 249:8-21). That revised policy prepared by Mr. Granholm in December of 1992 was submitted to and approved by the OCC in early 1993.

The foregoing evidence shows that the Bank had been working hard to satisfy OCC concerns regarding its loan policy well prior to the March 9, 1992 effective date of the Consent Order. Moreover, the Bank was certainly justified in relying upon the OCC's acknowledgements in February, March and April of 1992 that it was satisfied with the Bank's loan policies.

This belief was further substantiated by the fact that the Bank had ceased lending activities pending its complete compliance with all of the articles of the Consent Order. Because it had stopped lending, the Bank reasonably "prioritized" its tasks, opting to first revise its appraisal methodology policies, deferring further work on its loan policies until it was in a position to resume lending activities. The OCC conceded at trial that it had acquiesced in this "prioritization" in 1992. In accordance with this plan, as soon as Mr. Granholm was relieved of his duties as interim president, he drafted the finishing touches to his earlier work on loan policy and submitted it to the Bank's acting president in December of 1992. Soon thereafter, the OCC approved these final revisions in early 1993.

PROPOSED FINDINGS OF FACT

1. The decision by the Bank to defer completion of revisions to loan policies was disclosed to and approved by the OCC in 1992.

2. The OCC is estopped from declaring a violation of Article IX due to its own approval and acquiescence in the Bank's plan for compliance with Article IX.

3. The Bank was in material compliance with the requirements of Article IX.

4. Respondent did not cause, bring about, participate in, counsel, or aid and abet any noncompliance.

PROPOSED CONCLUSION OF LAW

The OCC did not carry its burden of proof to establish the requisite statutory factors necessary to support the assessment of any civil money penalty against respondent.

C. **ISSUE NO. 3: Did the Bank Materially Comply With Article X? If Not, Did Respondent Cause, Bring About, Participate In, Counsel or Aid and Abet Noncompliance.**

ARGUMENT

The OCC's position with respect to Article X was that the Bank did not have in place an effective "loan review program for the purpose of assuring the timely identification of problem loans in the Bank's loan portfolio." (See Exhibit B, Notice of Assessment of a Civil Money Penalty at p. 4 ¶ (6)).

At trial, the OCC attempted to support its position with the testimony of Mr. Ragus, who testified that he reviewed the Bank's loan portfolio and determined that there were ten loans that, in his opinion, should be graded lower than they had been graded by the

Bank. (TP 218:6-13). Mr. Ragus further noted that the Bank incurred $692,000 in loan losses in 1992. (TP 218:14-17). This loss resulted from two loans - the California Properties loan and the loan to borrower "F". (TP 218:18-219:2).

On cross-examination, Mr. Ragus was forced to admit that the Bank's loan review program had already identified both of these loans as "doubtful", which was the fourth lowest of five possible grades, the lowest being "loss". (TP 220:20-221:13).

Mr. Ragus also reluctantly admitted that these were the first two loans the Bank had ever taken a loss on in its entire seven year history and that he could not recall being in any other bank that had two or less loan losses in its history. (TP 221:14-222:8).

Mr. Ragus also reluctantly acknowledged that with the exception of the California Properties loan, all the other loans of the ten that he had downgraded had been paid off in full or were current and paying as agreed. (TP 225:5-226:4; TP 253:21-23). Mr. Ragus also candidly admitted that "every bank has some loan losses. It's part of the cost of doing the business." (TP 226:14-15). With respect to the California Hotel loan, Mr. Ragus was forced to admit that the 1989 San Francisco earthquake caused a significant drop off in the occupancy rate, and thus cash flow, of all hotels in the San Francisco area, thus reducing cash available for debt service. (TP 226:21-227:15).

In fact, Mr. Ragus' own report acknowledged that the California Properties loan and the loan to Borrower "F" were "unique to the portfolio." (TP 251:23-252:2; OCC 74, p. 4). In fact, Mr.

Ragus acknowledged that:

> "The loss potential from classified loans may be less than that experienced by other banks. All substandard loans are secured by real estate, mostly homes. The Bank has never taken a loss on a single family dwelling secured loan and several large substandard credits paid off, since our June 30, 1991 exam." (OCC Ex. 74, p. 4).

In the final analysis, Mr. Ragus was ultimately forced to admit that the fact that a loan criticized or downgraded by the OCC subsequently pays off is an indication that the OCC classification/downgrade may have been wrong in the first place. (TP 268:18-269:10).

Respondent took the OCC's June 1992 Report of Examination and prepared a report (WS 41) that showed that of the 22 loans criticized or downgraded by the OCC, 16 were paid in full and the remaining 6 were current, or about to pay off.

In sum, although the OCC contended that the Bank did not have in place ". . . an effective and independent loan review program for the purpose of assuring the timely identification of problem loans in the Bank's loan portfolio," the evidence at trial established that in fact the Bank's program for the identification of problem loans, and its ability to collect those loans when identified, resulted in an extraordinary track record of only two loan losses in its entire history. By Mr. Ragus' own admission, these two loans were "unique to the

loan portfolio" and he had never been in another Bank with two or less loan losses in its history. Given this extraordinary performance, it is difficult to conceive how or why the OCC can seriously contend that the Bank did not have in place adequate policies for the timely identification of problem loans.

PROPOSED FINDINGS OF FACT

1. At all relevant times the Bank had in place an adequate loan review program for the purpose of assuring the timely identification of problem loans in the Bank's loan portfolio. 2. The Bank was in material compliance with Article X.

3. Respondent did not cause, bring about, participate in, counsel, or aid and abet any noncompliance.

PROPOSED CONCLUSION OF LAW

The OCC did not carry its burden of proof to establish the requisite statutory factors necessary to support the assessment of any civil money penalty against Respondent.

D. ISSUE NO. 4: Did the Bank Materially Comply With Article XII? If Not, Did Respondent Cause, Bring About, Participate In, Counsel or Aid and Abet Noncompliance?

ARGUMENT

With respect to Article XII, the OCC contended at trial that "... as of December 31, 1992 the Board failed to establish a program for the maintenance of an adequate Allowance for Loan Lease Losses" (See Exhibit B, Notice of Assessment of a Civil Money Penalty, at p. 4, ¶ (7)). At trial the OCC was forced to backpedal in

the face of Respondent's substantial evidence that the Bank's allowances as of December 31, 1992 were in fact "adequate".[8] Recognizing that it could not prove the charging allegations in the Notice of Assessment, the OCC instead fell back on its familiar theme of subjective and semantic criticisms designed to obfuscate its lack of any objective proof. For example, on cross-examination Mr. Ragus admitted that "the Board had done all you [the OCC] had requested" with respect to the "allowance balance". (TP 263:3-7). Instead, Mr. Ragus complained only of the Bank's "methodology". (Ibid). He also candidly admitted that the Bank's "methodology" utilized appropriate "loss factors" as applied to its loan portfolio (TP 202:11-12), but complained that the Bank did not "explain why those factors are appropriate" for its loan portfolio. (TP 202:12- 14).

In response, Respondent again referred to the monthly reports given to the OCC commencing in April of 1992 (WS 1,2,3,4,5, and 6) which gave a detailed analysis of both the "methodology" for the Bank's allowance calculations, as well as a detailed substantiation of the "loss factors" which the Bank applied to the various categories of loans in its loan portfolio to determine what the allowances for losses

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[8] In fact, Respondent's evidence proved that in 1993, the OCC allowed the Bank to reduce its allowance $100,000. (TP 264:22-265:1). Since the Bank's 1993 allowance was at the same level as December 31, 1992, this evidence proved that, by the OCC's own admission, the Bank's December 31, 1992 allowance was not only "adequate" but was $100,000 higher than it needed to be.

should be (TP 455:17-465:3; WS 1). Respondent identified the new policy statement for allowance methodology (dated March 11, 1992, only two days after the effective date of the Consent Order) and described how that policy closely examined each aspect of the Bank's loan portfolio (TP 457:5-462:25).

As Respondent noted, the purpose of a reserve is to estimate future loan losses and make sure you have enough set aside to absorb those losses. (TP 458:4-7). Mr. Ragus gave similar testimony. (TP 197:23-24). Ironically, given the Bank's uniquely excellent track record of having never suffered any loan losses, the Bank had to utilize a methodology more complex than traditional analysis of historical loan losses. This methodology analyzed the various types of loans in the Bank's portfolio and the collateral for those loans. (TP 458:7-462:25).

In the final analysis, the OCC's entire case with respect to Article XII was nothing more than the simplistic conclusion that, since the OCC was of the opinion that the Bank's loan grading system was allegedly ineffective (see discussion of Article X above), and since the Bank suffered a $692,000 loss in 1992 on the California Hotel and Borrower "F" loans, the Bank's methodology for determining what its loan loss reserves should be must therefore be ineffective. (See OCC 134 wherein Mr. Ragus clearly premised his conclusion of allowance inadequacy on "the effect of our downgrades".) This argument of course fails since the underlying premises were themselves proven to be flawed. As noted above, the Bank's loan grading system had already graded the ten loans criticized

by the OCC as "doubtful", which was the fourth lowest out of five possible grades. Moreover, contrary to the OCC's conclusion that all of these loans should be graded as "losses", all of the loans paid off in full. The only exceptions, the California Hotel and Borrower "F" loans, were by the OCC's own admission "unique to the Bank's portfolio" and represented the only loan losses the Bank took in its entire history. It necessarily follows that since the $692,000 loss was a unique (in fact, the only) occurrence, the OCC's conclusion that the Bank's methodology for calculating loss reserves was somehow inadequate lacked any logical or substantive basis. Stated another way, since the OCC "downgrades" (see discussion of Article X above) were proven at trial to be unjustified, the OCC's resulting conclusion that the Bank's allowance was inadequate must logically also be unjustified.

Ironically, the Bank's "methodology" for calculating its allowance for losses had already caused it to voluntarily increase its reserves to $750,000 in early 1992 (TP 255:3-23), and an additional $200,000 near the end of 1992. (TP 262:15-263:2; OCC 134). The one time the OCC requested the Bank to increase its reserves, it was Respondent who stepped in and immediately caused a $250,000 addition to the reserve over the objections of the rest of the Board. (TP 257:4-10; WS 40).

As noted above, Mr. Ragus was forced to admit that the Bank had done all that the OCC requested of it regarding maintaining an adequate allowance balance in 1992. (TP 263:3-8). In fact, in 1993 the OCC allowed the Bank to reduce that balance by $100,000. (TP

264:22-265:1).

PROPOSED FINDINGS OF FACT

1. As of December 31, 1992 the Bank had established a program for the maintenance of an adequate Allowance For Loan and Lease Losses. As of December 31, 1992 the Bank maintained an adequate allowance.

2. The Bank was in material compliance with Article XII.

3. Respondent did not cause, bring about, participate in, counsel, or aid and abet any noncompliance.

PROPOSED CONCLUSION OF LAW

The OCC did not carry its burden of proof to establish the requisite statutory factors necessary to support the assessment of any civil money penalty against Respondent.

E. ISSUE NO. 5: Did the Bank Comply With Article XIII of the Consent Order? If Not, Did Respondent Cause, Bring About, Participate In, Counsel or Aid and Abet Noncompliance?

ARGUMENT

The OCC contends that the Bank violated Article XIII by allegedly failing "... to obtain current and satisfactory credit information" on various of the real estate secured loans in its loan portfolio. (See Exhibit B, Notice of Assessment of a Civil Money Penalty, at p. 5, ¶ (8); TP 265:2-7).

The OCC's case with respect to Article XIII completely fell

apart at trial. On direct, Mr. Ragus again gave his "opinion" that the Bank had not complied with Article XIII. Mr. Ragus identified several loans which his examination work papers indicated were lacking current financial information on the borrower.

At the beginning of the cross-examination with respect to Article XIII, Mr. Ragus was asked if he recalled being told by the Bank that, in California "... it was legally impossible for the Bank to go back and require current financial statements from the real estate borrowers because of their contractual relationships with those borrowers." (TP 265:8-14). He first denied such knowledge. (TP 265:15-16). He then recalled hearing something on that subject at Mr. Sarsfield's deposition a few weeks prior to the trial. (TP 265:17-19). He was then shown OCC 74, which was his February 10, 1993 "conclusion memo" prepared as part of the December 31, 1992 examination. In that memo, Mr. Ragus had included the following sentence:

> "The Bank cannot legally obtain updated financial information from most equity lines as long as the payments are current." (TP 266:5-14).

Mr. Ragus then denied any knowledge of the OCC being informed by the Bank of the legal impossibility in California of obtaining updated financial information on real estate loans that are current, as part of the negotiations leading to signing of the March 1992 Consent Order. (TP 266:19-267:2).

That afternoon Edward Mevi, counsel to the Bank's Board of Directors in 1992, took the stand. Mr. Mevi described the March 3, 1992 meeting with OCC representatives which led to the signing of the Consent Order, and his March 12, 1992 letter to the OCC confirming the substance of the agreements regarding the Consent Order made at that meeting. (WS 16). At the March 3rd meeting, the Board and Mr. Mevi advised the OCC that the Board may not be able to obtain current and satisfactory credit information on all loans lacking such information because it is legally impossible to do so under California law. (TP 367:22-368:12; WS 16). The OCC replied that they did not "expect literal compliance" with Article XIII and that a reasonable effort to obtain the information would be sufficient. (TP 368:16-19; WS 16). On cross-examination, the OCC lawyers asked Mr. Mevi if the Bank could have underwritten its real estate loans in such a way that they could have a legal means of obtaining updated credit information. The answer was and is "No". (TP 382:7-23).

The OCC never even attempted to refute the legal impossibility of the Bank's compliance with Article XIII. Moreover, the OCC never disputed its agreement with the Bank on March 3, 1992 that literal compliance with Article XIII would not be required - all that was expected was a reasonable attempt to obtain current financial information. This admission by the OCC conclusively establishes an estoppel to assess a civil money penalty for alleged noncompliance with Article XIII.

Nevertheless, Respondent took the stand and detailed the

Bank's extensive compliance with Article XIII. Respondent first detailed the Bank's revised policy provisions requiring detailed current financial information on all of the different types of loans comprising the Bank's loan portfolio. (TP 406-419; OCC 65). Respondent then identified the specific efforts undertaken by himself and the Bank to obtain current financial information on numerous specific loans that had been criticized by the OCC. (TP 465:4-469:5).

Finally, in addition to the established legal impossibility of obtaining current financial information, Respondent explained the practical reasons why in many instances it is not advisable to even attempt to do so. As Respondent explained, when a Bank's objective is to get paid on a loan, asking for updated financial statements is both counterproductive and exposes the Bank to the risk of litigation brought by borrowers arguing that the Bank misled them into believing their loans would be extended. (TP 418:16-419:9).[9]

In sum, the OCC's case on Article XIII was both substantively inadequate and barred by the legal doctrine of estoppel. The OCC acknowledged the legal impossibility of literal compliance with Article XIII and did not deny its agreement on March 3rd to waive such compliance. Moreover, Respondent conclusively proved that, to the extent legally possible, the Bank did everything possible to assure that its loan officers obtained adequate current financial

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[9] As part of Respondent's broad experience in banking spanning 35 years, he has testified extensively as an expert witness for banks and borrowers in lender liability cases.

information when making loans and updated that information whenever and wherever legally possible.

PROPOSED FINDINGS OF FACT

1. On March 3, 1992 the OCC waived literal compliance with Article XIII and agreed to accept a reasonable attempt by the Bank to obtain current financial information as adequate performance of Article XIII.

2. The OCC is estopped from declaring a violation of Article XIII due to its agreements with the Bank made on March 3, 1992.

3. The Bank was in material compliance with the requirements of Article XIII.

4. Respondent did not cause, bring about, participate in, counsel, or aid and abet any noncompliance with Article XIII.

PROPOSED CONCLUSION OF LAW

The OCC did not carry its burden of proof to establish the requisite statutory factors necessary to support the assessment of any civil money penalty against Respondent.

F. ISSUE NO. 6: Did the Bank Materially Comply With Article XV? If Not, Did Respondent Cause, Bring About, Participate In, Counsel or Aid and Abet Noncompliance?

ARGUMENT

Article XV required the Bank to maintain Tier 1 capital at least equal to eight percent (8%) of risk-weighted assets. At trial, it was proven that the Bank maintained Tier 1 capital at eight percent or

higher throughout 1992. However, in February of 1993, the OCC unilaterally decided to make an "adjustment" to the Bank's capital retroactive to December 31, 1992. As a result of that "adjustment" the OCC retroactively determined in 1993 that the Bank did not have Tier 1 capital at eight percent as of December 31, 1992. It was undisputed that the Bank maintained Tier 1 capital at eight percent or higher every other day in 1992. (TP 310:11-13; TP 469:22-471:5).[10]

The issue seized upon by the OCC in February of 1993 to retroactively "adjust" the Bank's Tier I capital calculation relates to a contract between the Bank and the federal agencies to service Freddie Mac/Fannie Mae loans. Under these contracts, the Bank services the Freddie Mac/Fannie Mae loans and receives certain income in exchange therefor (TP 305:17-308:11; WS 14). As with other Banks with similar contractual relationships, the value of these service contracts is carried as an asset of the Bank and goes into its Tier I capital calculation. (TP 308: 19-309:5).

The Bank had been valuing these contracts under accepted accounting methods for at least five or six years as of 1992. (TP 318:11-23; 328:15-22).

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[10]Xs noted above, both Mr. Sander and Mr. Ragus admitted that Mr. Sarsfield was not part of the Bank's management after August of 1992 and not responsible for compliance with the Consent Order thereafter. Nevertheless, the OCC saw fit to impose a $15,000 penalty against Respondent based upon its "adjustment" in February of 1993 of the Bank's December 31, 1992 assets.

In the early part of 1992, Respondent had discussed with the OCC the method by which the Bank valued these contracts. As a result of these discussions, Respondent consulted with the Bank's outside CPA firm and made an adjustment to the value at which these contracts were carried on its books. This adjustment was reflected in the Bank's financial statements thereafter and not questioned by the OCC throughout the rest of 1992. (TP 318:11-319-18).

On December 31, 1992, the Bank's Chief Financial Officer prepared a report given to members of the Board (including Respondent who had withdrawn from active management but was still on the Board) which showed the Bank's Tier I capital significantly higher than eight percent. (TP 310:14-24; WS 21). In February of 1993, and without any discussion or consultation with the Board of Directors, the OCC reversed the Bank's accounting treatment of the Freddie Mac/Fannie Mae servicing contracts and assigned a zero value. The OCC then made a retroactive adjustment to the Bank's Tier I capital causing that calculation as of December 31, 1992, to be at 7.82 percent (.18 basis points below the required eight percent level). (TP 309:6-310:10; TP 320:6-321:15; WS 22).[11]

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[11]It is interesting to note that this retroactive "adjustment" by the OCC is based upon a zero value being assigned to these Freddie Mac/Fannie Mae servicing contracts. At trial, the OCC offered no evidence to support this "adjustment" nor any explanation as to why the Bank's valuation of these contracts, based upon the advice of its outside CPA firm, was not the correct method.

In sum, it was undisputed at trial that the Bank had maintained Tier I capital at eight percent or higher throughout 1992, but for the OCC's unilateral (and unsupported) "adjustment" in February of 1993 made retroactive to December 31, 1992. Even if one assumes for the sake of argument that the OCC's assignment of zero value to these Freddie Mac/Fannie Mae service contracts is correct (in order to do so one has to ignore the conclusions of the Bank's CPA firm), it is still undisputed that as of December 31, 1992 the Board (and Respondent) reasonably relied upon reports given to it by the Chief Financial Officer indicating that the Bank's Tier I capital was in excess of eight percent on that date. Moreover, even if one were to assume for the sake of argument that the Board's reliance on information provided to it by its Chief Financial Officer was not reasonable, it is undisputed that Respondent was no longer involved in active management and responsible for the Bank's compliance efforts as of December 31, 1992.

PROPOSED FINDINGS OF FACT

1. The Bank was in material compliance with Article XV at all relevant times.

2. The Bank acted reasonably in relying upon the information supplied to it by its Chief Financial Officer that the Bank maintained Tier I capital at eight percent or higher as of December 31, 1992. The Bank could not have anticipated the OCC's February 1993 "adjustment" to the Chief Financial Officer's calculations.

3. Respondent did not cause, bring about, participate in, counsel, or aide and abet any non-compliance.

PROPOSED CONCLUSION OF LAW

The OCC did not carry its burden of proof to establish the requisite statutory factors necessary to support the assessment of any civil money penalty against Respondent.

III.

CONCLUSION

At the conclusion of the trial it was readily apparent that the OCC's case against Respondent lacked the requisite substance necessary to carry the OCC's burden of proof with respect to Articles VI, VII, IX, X, XII, XIII and XV. With respect to each indicia of alleged noncompliance, most of which were nothing more than purely semantic criticisms devoid of objective facts to support them, Respondent presented detailed factual evidence outlining his own extraordinary efforts at compliance with the Consent Order and the resulting compliance in fact with each of the articles placed in controversy by the Notice of Assessment. The few objective criteria relied upon by the OCC were shown to be erroneous, due to reliance upon a combination of outdated documents, erroneous and misleading reports from Henning/Bolles, and serious gaps in awareness of all that Respondent had done and was doing to comply with the Consent Order.

In addition, the evidence clearly established the OCC's prior acceptance of the Bank's compliance with Articles IX and XIII, thus estopping the OCC from belatedly claiming noncompliance in 1993. Moreover, Respondent presented an overwhelming body of evidence refuting the OCC's contention that Respondent "brought about,

participated in, counseled or aided and abetted" any alleged noncompliance. The OCC conceded at trial that Respondent was no longer involved in management after August, 1992 and was not involved with compliance with the Consent Order thereafter. Ironically, Respondent was forced to resign from management at the Bank in August of 1992 largely because of the admitted alliance between the OCC and the Henning/Bolles minority faction to force Respondent out of the Bank. The OCC admitted at trial that this was the acknowledged real purpose of the March 1992 Consent Order. In addition to a marked lack of substance, the OCC's case was also shown at trial to suffer from a serious lack of credibility. In its Prehearing Statement, the OCC admitted that its two star witnesses (Henning and Bolles) were members of a minority faction on the Bank's Board which intentionally attempted to thwart the Board's efforts at compliance with the Consent Order and instead pursued their own personal vendetta aimed at wresting control from the majority group on the Board. Mr. Henning admitted at trial that he "got in bed" with the OCC as far back as 1991 for that express purpose, and that he surreptitiously forged and submitted to the OCC false and misleading "reports" designed to mislead the OCC into ousting Respondent. In what can only be described as prosecutorial misconduct, the OCC first assessed Henning and Bolles a $5,000 penalty, and then bought their testimony with a reduction of that penalty to $950. The collusive nature of this conduct is illustrated by the fact that the OCC withheld final signature on this "deal" until after Henning and Bolles "performed" at trial.

Based on the foregoing, Respondent respectfully submits that the OCC failed to prove its case in support of the proposed $15,000 assessment against Respondent. The OCC is now precluded from arguing for an assessment in some lesser amount, having failed to prove the case that it took to trial. Respondent thus respectfully submits that the Court should find in his favor with respect to each of the Articles in the Notice of Assessment and find that no assessment against Respondent is warranted. In the alternative, if the Court does not conclude that a complete rejection of the OCC's case is justified, Respondent respectfully submits that any assessment should be for the nominal sum of $100 to reflect the admitted primary culpability of the Henning/Bolles minority faction for any alleged noncompliance with the Consent Order and the fact that, by the OCC's own admission, after August of 1992 Respondent was no longer involved in management or responsible for further compliance efforts.

Dated: August 11, 1994 Respectfully submitted,

/s/ Michael W. McCann
CAPPELLO & McCANN
Attorneys for Respondent

June 16, 1994

The Honorable Arthur L. Shipe
Office of Financial Institution Adjudication
1700 G Street NW
Washington, DC 20552

Re: In Matter of Sequoia National Bank, San Francisco, California, AA-EC-93-144.

Dear Judge Shipe:

I am writing to inform you that Respondents Glover, Niedermeyer, Henning and Bolles in the above-captioned action have entered into settlements with the OCC, which have been approved by the agency. Therefore, with respect to these Respondents, matter AA-EC-93-144 is considered closed. Copies of the executed settlement documents are enclosed.

Sincerely,
/s/ Michael Bloise
Attorney
Enforcement & Compliance Division
Enclosures

cc: All Counsel
Hearing Clerk

[Dated May 23, 1994 (pp. 1, 10-12 only)]

UNITED STATES OF AMERICA

DEPARTMENT OF THE TREASURY

OFFICE OF THE COMPTROLLER OF THE CURRENCY

AA-EC-93-144

IN THE MATTERS OF:

WILLIAM C. SARSFIELD, FORMER CHAIRMAN OF THE BOARD AND CURRENT DIRECTOR;

PETER P. BOLLES, FORMER DIRECTOR; AND

JOHN F. HENNING, JR., CURRENT DIRECTOR;

SEQUOIA NATIONAL BANK,

SAN FRANCISCO, CALIFORNIA

OFFICE OF THE COMPTROLLER OF THE CURRENCY'S PREHEARING STATEMENT

STATUTORY AUTHORITY

The Office of the Comptroller of the Currency ("OCC") is responsible for regulating the affairs of national banks and ensuring their safety and soundness for the protection of the depositors, shareholders, and the general public. Consequently, the OCC's statutory authority is extremely broad. First National Bank of La Marque v. Smith, 610 F.2d 1258, 1264 (5th Cir. 1980). The OCC's statutory authority covers almost every aspect of the affairs of a national bank. See Independent Bankers Association

v. Heimann, 613 F.2d 1164 (D.C. Cir. 1979), cert. denied, 449 U.S. 823 (1980). In fact, "[n]ational banks are perhaps as meticulously regulated as any industry. Every aspect of their affairs is scrutinized to assure financial soundness and ethical practice." Id. at 1168. . . .

LEGAL ARGUMENT

ISSUE 1: Respondents caused, brought about, participated in, counseled, or aided or abetted the Bank's failure to comply with the terms of the Consent Order, in violation of 12 U.S.C. § 1818(I).

Respondents were all members of the Bank's Board of Directors, and as such possessed both the responsibility and the authority to ensure compliance with the Consent Order. The directors chose, however, to spend their time and energies bickering amongst themselves, to the detriment of the Bank. The Bank was first cited for noncompliance with the Consent Order in June of 1992. In spite of this warning, however, the directors continued to act at cross purposes, and allowed the Bank to remain in noncompliance through the December 31, 1992 examination.

Certain Respondents have claimed that they were unable to effect positive change because a majority of the Board actively prevented them from enacting any improvements. While this claim may seem reasonable, it evidences a fundamental lack of understanding of the proper role of a director. No single director

ever has the power to enact changes in the direction of a corporation solely by himself. Directors must act in concert, building consensus and exercising good faith in an attempt to create progress. In setting themselves up as a more or less "permanent" minority, those dissenting directors acted as a roadblock themselves, taking solace in their outsider status and refusing to work with the majority to alter the Bank's policies and practices, and to find truly qualified officer candidates to lead the Bank. Eventually, a president and senior lending officer acceptable to both factions was found, but by that time noncompliance with the Consent Order had continued for months, and the Bank had remained consistently in danger of failure.

The minority group of directors equated anything that was beneficial to the majority group with a detriment to the Bank. This simplistic mathematics ignores the reality that the primary duty of the minority group directors during the period of noncompliance was to attempt to achieve compliance with the Consent Order, not to attempt to thwart any initiative which might have the secondary effect of allowing the majority group to retain effective control of the Board.[3]

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[3] See, Decision of the Comptroller of the Currency, In the Matter of Gateway National Bank of St. Louis, St. Louis, Missouri, AA-MW-88-95 (February 21, 1990). In Gateway, a director was held liable for noncompliance with a consent order, even though he had not signed the consent order, and was a dissenter on the board.

Because directors always have a duty to act in the best interests of the bank, once one accepts the premise that compliance with the Consent Order is in the best interests of the Bank, the entire Board of directors may be cited for its failure to bring about compliance. This case differs from an ordinary situation where there may be legitimate internal differences among the directorate as to what constitutes the best interests of the Bank. That issue does not arise here, because the terms of the Consent Order, approved by the Board of Directors and the OCC, constitute a de facto list of what those interests are. All that the directors then had to do, all that they had to agree on, was to take the steps necessary to ensure compliance with the Order. The entire directorate failed to take those steps, and therefore the entire directorate is liable for the failure to do so. . . .

DATE: 5/23/94 Respectfully submitted,

/s/ Michael Bloise, Attorney
Enforcement & Compliance
Division Office of the Comptroller
of the Currency
Washington, DC 20219
(202) 874-4800

[June 10, 1994 (Vol. IV, pp. 784-789,
796-799, 802-807, only)]

BEFORE THE
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER
OF THE CURRENCY

AA-EC-93-144

IN THE MATTERS OF:
WILLIAM C. SARSFIELD, Former Chairman of the Board and
Current Director;
SEQUOIA NATIONAL BANK,
SAN FRANCISCO, CALIFORNIA

Transcript of Proceedings

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knew about the issue. I was not party to the discussions with the OCC, however.

MR. BLOISE: Mr. Henning, I'd like to ask you to take a look at the documents marked OCC Exhibits 156 to 160.

(The documents referred to were marked OCC Exhibits Nos. 156 through 160 for identification.) (The documents were proffered to the Witness.)

THE WITNESS: Yes. Well, I'm looking at them, yes.

BY MR. BLOISE:

Q. Are you familiar with these documents?

A. Well, since I was authoring them, I think I am. Yes.

Q. Taking them one at a time, could you go through them and explain what they are?

A. Well, I'll go through them in the numerical order in which they've been presented to me. I'm dealing first with OCC Exhibit 156, which is my letter to Joanne Hyder, dated March 25, 1993. This was a bitter letter of mine to Ms. Hyder. It is venting my frustrations in terms of being on the Compliance Committee, and the fact that I was being

undercut to my way of thinking. It appears -- I don't mean to create problems here, but the whole letter is not here.

Q. This is the version that comes out of the OCC --

A. It stops -- what?

Q. This is the version that I found --

A. Well, there's a very truly yours. Well --

MR. BLOISE: Your Honor, do you have beyond page 9 of Exhibit 156?

JUDGE SHIPE: No, I do not.

THE WITNESS: Well, I --

MR. BLOISE: All the copies are short.

THE WITNESS: Well, I could procure it at the break, or something, but this letter was longer than the exhibit I have here. But without going through this line by line, it's a summary of my problems with the Bank and with my frustrations and inabilities to meet the requirements for compliance with the Consent Order, and the general problems with the Bank's operation. Short of going through each line, I have difficulty going beyond that.

BY MR. BLOISE:

Q. Moving on to Exhibit 157, would you explain what that is.

A. Let's see what the date of this is. This is a

(1) declaration in October of '91, which I believe was in (2) response to one of these 15-day notices. Again, it (3) outlines in historical detail my problems with the Bank, (4) getting back to June, roughly, of '91, and the attempts by (5) Mr. Sarsfield to handcuff and limit my powers and exercise (6) of my rights as a director, and in his general (7) interferences with the operation of the Bank. I'm (8) generalizing that in response to your direction.

(9) Q. Is there specific incidents discussed in that (10) declaration? (11) A. There are a number of specific incidents. I was (12) somewhat disturbed regarding retaliatory treatment of our (13) Ms. Beverly Williams, who was our vice president and (14) cashier. She brought to my attention that there were a (15) number of violations of the reporting functions and the (16) Call Reports. There were attempts to intimidate her in (17) terms of her contacts with the OCC. There were elements (18) of what I thought were sexual discrimination involved at (19) the Bank in terms of employment. The problems of removing (20) Ms. Williams from employment were something I resisted. (21) There was an attempt to force my resignation. (22) There was an attempt to bribe me, as I interpreted it. (23)There was also an attempt, there was an ongoing attempt by (24) Mr. Sarsfield to determine which employees of the

Bank (25) were talking to the OCC. He asked me this question a

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(1) number of times. He asked this question of Mr. Sander and (2) told Mr. Sander, when Mr. Sander was at the Bank, that he (3) was quite aware that the OCC was talking with myself and (4) with Ms. Beverly Williams, and he wanted Mr. Sander to (5) realize that. These were all attempts in my view to (6) intimidate the OCC. There were constant attempts to (7) intimidate the OCC.

(8) I will try to be calm here. But at the very (9) final meeting that we had with the OCC, at which we signed (10) the -- which I refused to sign, I might add -- the Consent (11) Order, at the close of the meeting, the Bank's attorney, (12) Mr. Mevi, stood up -- and there are memos to this effect (13) signed by Mr. Tornborg and Mr. Sander -- at the close of (14) the meeting, he stood up and told the OCC representatives (15) that, if any director, any employee of the Bank, contacted (16) the OCC with regard to this Consent Order, or any other (17) matter, the employee would be fired and they would remove (18) the director. And the OCC representatives sat there and (19) looked at the table.

(20) Q. Continuing on, Exhibit 158, can you identify (21) that document?

(22) A. This was involving a memorandum, which I (23) prepared for Jane Bodmer. I believe I attended a meeting

(24) with Stan Crisp, Jane Bodmer and Robert Tornborg at the (25) OCC. This laid out, in the time frame of June and July

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(1) 1991, my problems with the Bank's administration. I would (2) note there that the question of liquidity had its ugly (3) head raised even back then. Again, while the memo, you (4) know, speaks for itself, it does reflect the total (5) domination of the Bank's administration by Mr. Sarsfield, (6) which domination continues to date. It also, if you look (7) at page 7, 8, 9, it's statements attributed to Mr. (8) Sarsfield there, all reflective of his general attitude (9) and approach to the Bank, and the problems there are (10) problems that plagued the Bank at that time and many (11) continue to plague the Bank.

(12) Q. Can you identify Exhibit No. 159? (13) A. Exhibit 159 is a July 1 memorandum, again (14) prepared for Ms. Bodmer. I might explain this for the (15) Judge so he understands this format here. This format was (16) designed to make this appear to be an official document. (17) I just want to explain this for the Judge's education. (18) At the time I first met with the OCC, it my (19) understanding that associated of Mr. Glover and Mr. (20) Sarsfield were still employed with the OCC, and I was (21) quite concerned that any comments of any materials that I (22) provided the OCC would be attributed to me

immediately by (23) personnel of the OCC. That was, I want to say for the (24) record, that was an unfounded fear. I don't mean to (25) suggest otherwise; but, at the time, in June and July

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(1) 1991, we had been told for four or five years that Kent (2) Glover had been the head man at the OCC. These people (3) worked for him. He hired them, he controlled them. They (4) had people in the OCC that would take care of us. So, to (5) some degree, I believed that and, as I told Ms. Bodmer, (6) when I first met her, the purpose of preparing these memos (7) in this form was to essentially prevent any attribution to (8) me in case personnel of the OCC came upon these. I didn't (9) want these things getting back to Mr. Sarsfield. So (10) that's why they were put in this format. I just wanted to (11) explain that. These documents were prepared by me and (12) this format was chosen by me to disguise the source. I (13) just didn't want the Judge to think that this was a formal (14) document prepared by the OCC. It was prepared by me.

(15) But, again, this lays out the problems in terms (16) of capitalization, the questions of Board dissension, the (17) problems of Mr. Sarsfield's outside legal consultations (18) for various law firms, the problem that I thought the (19) Bank's charter had been procured by fraud; namely: there (20) was no 914 review done on any

of the officers. It was (21) represented to the OCC that Mr. Glover would be the chief (22) executive officer when, in fact, it was at all times Mr. (23) Sarsfield. This charter was procured by friendship and by (24) letter, literally. I won't dwell on that any longer, but (25) the point is that the problems with this bank, in terms of .

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(1) JUDGE SHIPE: Are you a shareholder in the Bank?

(2) THE WITNESS: Yes, I am.

(3) JUDGE SHIPE: How many shares do you have?

(4) THE WITNESS: I have 6,900, roughly, shares.

(5) JUDGE SHIPE: How many shares does Sarsfield (6) hold?

(7) THE WITNESS: I don't know. I just know in (8) matters of the dollars. I think he has an investment of (9) something close to $350,000 to $400,000. My investment (10) is roughly $50,000.

(11) JUDGE SHIPE: Thank you.

(12) Are you going to have extended cross?

(13) MR. MC CANN: I wouldn't call it extended, Your (14) Honor. I think probably certainly less than an hour.

(15) JUDGE SHIPE: We'll take a short recess.

(16) Off the record.

(17) (Whereupon, a brief recess was taken.)

JUDGE SHIPE: We'll be back on the record.

Mr. McCann, you may cross-examine.

MR. MC CANN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. MC CANN:

Q. Now, Mr. Henning --

A. Yes.

Q. -- you, as you testified, you've been a member

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of the Board of Directors at this Bank, since back at its inception. Is that correct?

A. That is correct.

Q. And I believe you had identified yourself as a member of what we call the minority faction on the Board here. Correct?

A. That's true, yes.

Q. In fact, you're probably sort of the ringleader, wouldn't you say, of the minority faction?

A. Well, there's no ring left. I'm the only member of the minority left. I'm sorry.

Q. But you were the driving force in the minority faction. Right?

A. Well, yes. If you want to say that, yes.

Q. And you've really been on sort of a personal vendetta trying to get rid of Mr. Sarsfield out of this Bank for some years, now, haven't you?

(18) A. Since June of '91, yes; that's absolutely (19) correct.

(20) Q. And you found out in August of 1992, in a (21) meeting with the OCC that that was their objective, as (22) well. That was the purpose behind the Consent Order, (23) right?

(24) A. No.

(25) Q. Let me --

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(1) A. I was advised of that at a meeting, but I wasn't (2) present at the meeting.

(3) Q. Well, that's right. Your Mr. Bolles told you.

(4) A. Yes.

(5) Q. Is that right?

(6) A. Yes.

(7) Q. And Mr. Bolles, as a matter of fact, is one of (8) the directors who you represented in these proceedings. (9) Right?

(10) A. Yes, that's true. Yes.

(11) Q. And you have no reason to believe that what Mr. (12) Bolles told you about the OCC's real purpose for the (13) Consent Order to be untrue, do you?

(14) A. No.

(15) Q. And so, when you found out that you and the OCC (16) had similar objectives, you decided to get in bed with the (17) OCC. Didn't you?

(18) A. I decided to get in bed, if you want to use that (19) phrase, back in 1991.

(20) Q. Okay.

(21) A. For two years.

(22) Q. And you found out you finally had a willing bed (23) partner in August of 1992. Right?

(24) A. No. I knew that on June 26, 1991.

(25) Q. Okay. Now, you were named as one of the

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(1) Respondents in these proceedings, weren't you?

(2) A. Yes. That's correct.

(3) Q. Okay. And by the way, and you made a deal with (4) the OCC now, before you testified here. Right?

(5) MR. BLOISE: Objection, Your Honor. Settlement (6) is inadmissible in these proceedings.

(7) MR. MC CANN: Well, it's highly admissible to go (8) to bias and motive for the testimony and opinions --

(9) JUDGE SHIPE: I deny the objection. The witness (10) may answer.

(11) BY MR. MC CANN:

(12) Q. Let me rephrase it. You made a deal with the (13) OCC before you testified here today, didn't you?

(14) A. No.

(15) Q. Well, we'll come back to that.

(16) Now, did you get -- (17) A. Let me answer the question. (18) Q. There's no question, Mr. Henning.

(19) A. What?

(20) Q. You don't have a question to answer. All right?

(21) The rules are a little different when I'm asking them.

(22) A. They are? You make the rules?

(23) JUDGE SHIPE: Let's just have the question.

(24) //

(25) //

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(1) to attempt to thwart any initiative which might (2) have the secondary effect of allowing the (3) majority group to retain effective control of (4) the Board."

(5) Were you aware of this?

(6) A. I was not aware of any of those statements.

(7) Q. Okay.

(8) A. But I'll agree absolutely with the last (9) statement. Absolutely.

(10) Q. So, in other words anything the majority group

(11) OF the Board suggested --

(12) A. Yes.

(13) Q. -- in terms of their efforts to comply with the (14) Consent Order --

(15) A. Yes. (16) Q. -- if it also had the effect in your opinion of (17) them remaining as the majority group you opposed it. (18) Didn't you? (19) A. Absolutely not. Absolutely not.

Q. Are you telling me that the OCC is wrong, then?
A. I'm just stating, answering your question. You can draw your own conclusions.
Q. Thank you.
A. Good.
Q. Now, after having made those statements about

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you --
A. Well, this statement, for the record, I would --
Q. And, by the way, when you negotiated your settlement agreement with the OCC, you also negotiated on behalf of your client, Mr. Bolles. Is that correct?
A. That's correct.
Q. Now, you had the Notice of Assessment that indicated that the OCC, at least, thought you should be assessed $5,000. Right?
A. No. I thought it was $4,000, but I could be wrong.
Q. And you got them to take only $990. Right?
A. I don't know. There's a question of "got them." Let's state it this way: That was the sum agreed upon, yes.
Q. That was the dollar amount that they agreed to reduce the penalty so you would cooperate with them here in these proceedings. Right?

(19) A. No, that's not correct. No. That's not (20) correct.

(21) Q. By the way, how did you get the figure $990? (22) You wanted it to be under a thousand dollars, didn't you, (23) Mr. Henning?

(24) A. Well, I did not agree to pay any penalty.

(25) Q. But you agreed to pay $990 --

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(1) A. No -- (2) Q. -- in this deal that you made with them. Right? (3) A. There is no deal as yet. There's a negotiated (4) settlement that hasn't been executed.

(5) Q. Okay. But you wanted it under a thousand (6) dollars. Don't you?

(7) A. I wanted zero dollars.

(8) Q. But you told them it had to be under a thousand, (9) didn't you?

(10) A. Well, I made a number of statements. At one (11) time, I said I didn't want more than $250, $450. It went (12) back and forth. Then, I did say that I wasn't going to (13) pay that kind of money; and, then, the figure of $990 came (14) up, yes.

(15) Q. Well, actually, you were down around $250 or (16) $450. They were much higher than a thousand. You told (17) them it had to be under a thousand. Didn't you?

(18) A. I don't recall them -- now, they're tact -- I (19) don't know whether this is relevant or not -- was to make

(20) me come up from the basement. I don't think, I don't (21) recall them ever having a figure above a thousand. I was (22) being pulled up and it wasn't as if they were opposing. (23) They weren't coming from $500 down. I was coming from --

(24) Q. Try to answer my question, please, Mr. Henning.

(25) You told the OCC that, whatever the agreement was going to

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(1) be, it had to under a thousand. Didn't you?

(2) A. That became a point at the end, yes.

(3) Q. That's a yes, isn't it?

(4) A. Yes.

(5) Q. That's your way of saying yes?

(6) A. Yes.

(7) Q. And you wanted it under a thousand and the OCC (8) went along with you --

(9) A. No, they haven't, yet.

(10) Q. -- because you felt that, if you paid over a (11) thousand, it may have some impact on your aspirations to (12) be appointed to the bench. Isn't that correct, Mr. (13) Henning?

(14) A. No. (15) Q. Well, why did you have to have it under a (16) thousand?

(17) A. Because I thought it, to be frank, made the (18) Board, or the OCC, look ludicrous.

(19) Q. Okay.

(20) A. Sorry about that.

(21) Q. But they, at any rate, went along with your --

(22) A. They haven't as yet.

(23) Q. -- view, though.

(24) A. It's my prayer that they go along with it, so I (25) support that.

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(1) Q. And being a good lawyer, you cut the same deal (2) for your client, Mr. Bolles. Correct?

(3) A. Yes.

(4) Q. And he's going to be testifying here today, too, (5) isn't he?

(6) A. I assume he is.

(7) Q. Well, you've seen him out in the hallway. You (8) know he is. Don't you?

(9) A. Yes, I do. (10) Q. You don't have to assume that. That's a fact (11) you know. Isn't it?

(12) A. He's been here for 3 days and still hasn't (13) testified, so it's not a fact.

(14) Q. Now, you also, in addition to trying to get rid (15) of Mr. Sarsfield for many years, and now collaborating (16) with the OCC in that effort, you've been trying to get the (17) OCC to close the Bank for many years. Haven't you?

(18) A. Yes.

(19) Q. Okay.

(20) A. Well, since July of '91, yes.

(21) Q. Now, by the way, you testified for the OCC on (22) this subject of the plan to sell assets. Now, did I (23) understand you correctly? Is it your testimony that Mr. (24) Sarsfield resisted the plan to sell the assets?

(25) A. I stated -- yes. He took no action to support

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(1) the resolution of the Board to sell the assets.

(2) Q. Mr. Henning, isn't it true that Mr. Sarsfield (3) prepared the action plan and presented it to the Board in (4) August to get it adopted for the every objective of (5) selling the assets?

(6) A. August, September, October, November, December, (7) five months. December 31, 1992, didn't meet liquidity. (8) So he delayed that for five months.

(9) Q. Excuse me, Mr. Henning. (10) A. Yes.

(11) Q. Answer my question, would you, please.

(12) A. The answer to your question was answered in my (13) direct testimony. The Board --

(14) Q. Answer my question, please.

(15) A. -- in August adopted the plan to liquidate --

(16) Q. And who wrote it?

(17) A. He proposed it back --

(18) Q. Thank you.

(19) A. -- in March, in fact, and waited four months (20)

before ever acting on that.

Q. But you also told us a few minutes ago, for the OCC, that it was your idea to sell the assets. Didn't you?

A. That was my idea, yes.

Q. Did you prepare the action plan in August and . . .

[June 10, 1994 (Vol. IV, pp. 831-832 only)]

BEFORE THE
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER
OF THE CURRENCY

AA-EC-93-144

IN THE MATTERS OF:
WILLIAM C. SARSFIELD, Former Chairman of the Board and
Current Director;
SEQUOIA NATIONAL BANK,
SAN FRANCISCO, CALIFORNIA

Transcript of Proceedings

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BY MR. MC CANN:

Q. Exhibit 141, please, Mr. Bolles.

Actually, before we get into that, back in August 1992, when Mr. Sarsfield withdrew from the day-to-day management of the Bank, do you recall he submitted a proposed action plan to the Board which was, in fact, adopted by the Board?

A. Yes, I do.

Q. And, in fact, you would agree that that plan, if adequately implemented by management after its adoption by the Board, would have responded to all the issues in the Consent Order. Right?

A. No. No, it only responded to certain specific articles.

Q. Well, let me read to you -- let me ask you this: Do you recall giving a deposition for the OCC in this case back in April of this year?

A. Correct.

Q. Let me read to you, please, from page 35, line 24, over onto page 36: "Answer: But basically, by August, there was in effect a Board mandated plan to resolve and to address each one of these issues that you're talking about: capital, assets, management, earnings and liability."

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(1) A. That's correct.

(2) Q. Do you recall giving that answer?

(3) A. That does not necessarily respond to all 17 (4) articles of the Consent Order. It does, that does, (5) respond to the items that were raised at the deposition (6) which had to do with a separate matter.

(7) Q. Well, you do understand that all 17 articles are (8) not in contention here in this hearing here, either?

(9) A. I don't understand that, no.

(10) Q. So you don't know what's in contention and (11) what's not in contention?

(12) A. No, I don't.

(13) Q. Okay. But you at least admit that, at your (14) deposition, you told the OCC that Mr. Sarsfield's plan (15) responded to all the issues they were raising. Right?

(16) A. At the deposition.

(17) Q. And if implemented, it would have responded to (18) all the issues, at least the ones raised by the OCC, at (19) your deposition. Right?

(20) A. Those issues raised at the deposition, yes.

(21) Q. And, then, in Exhibit 141, on page 10, please, (22) I'd like to direct your attention to the same statement (23) that the OCC brought to your attention; that is:

(24) "The Board is now unified behind Director (25) Sarsfield. . . . ."